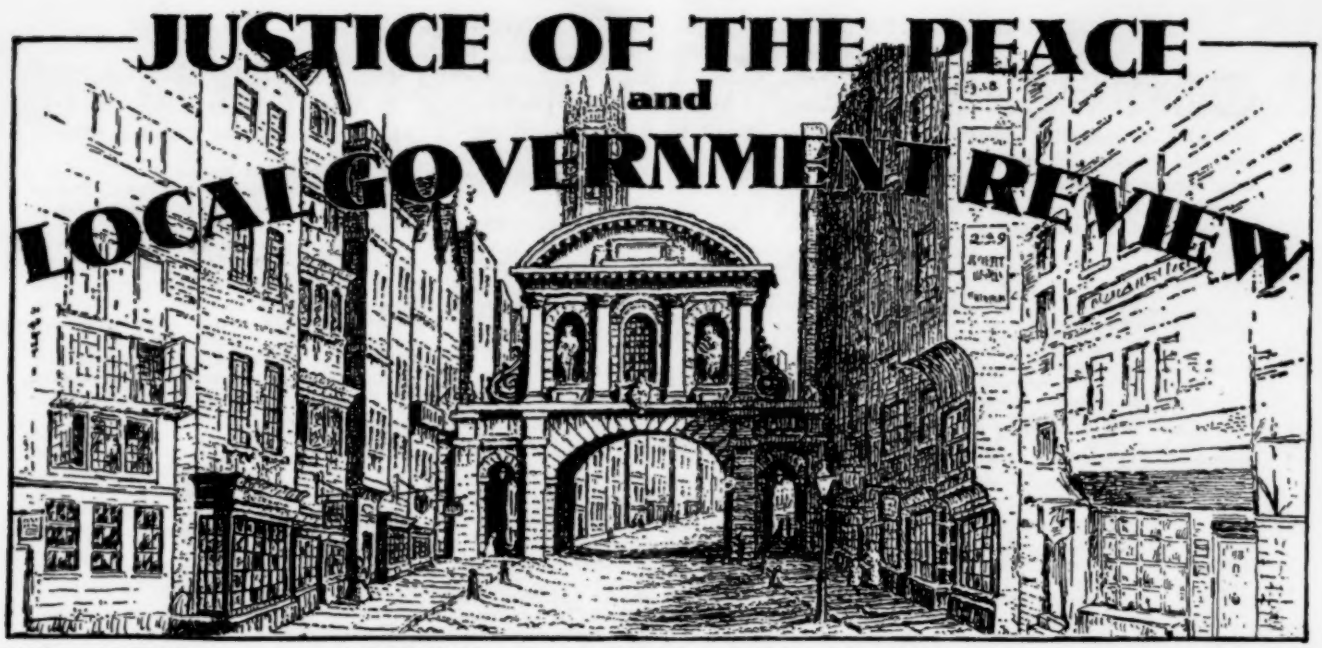

VOL. CXVIII LONDON: SATURDAY, JULY 31, 1954 No. 31

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* **Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.**

SITUATIONS VACANT

GLOUCESTERSHIRE. Assistant Clerk. Clerk to the Justices at charming Cotswold village wishes to engage, as part time assistant clerk (12 hours per week), a retiring, or recently retired, Justices' Clerk's assistant or Police Officer. Assistance in house purchase available if required. Box No. A.23, Office of this Newspaper.

IMPERIAL CHEMICAL INDUSTRIES Limited has vacancies for solicitors below the age of thirty for administrative work in the Secretary's Department of the Company's Division in the provinces after training at Head Office in London. The posts offer good prospects of advancement. Salary will be dependent upon age and experience.

Application form may be obtained from the Recruiting Section, Central Staff Department, Imperial Chemical Industries Ltd., Imperial Chemical House, Millbank, London, S.W.1.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (T. E. Hoyland, Ex-Detective Sergeant). Member of The Association of British Detectives, World Secret Service Association and Associated American Detective Agencies. DIVORCE — OBSERVATIONS — ENQUIRIES—Civil and Criminal investigations anywhere. Over 1,000 Agents. Over 27 years C.I.D. and Private Detective Experience at your Service. Empire House, 10, Piccadilly, Bradford. Tel. 25129. (After office hours, 26823.) Established 1945.

BOROUGH OF NEWPORT, ISLE OF WIGHT

Appointment of Assistant Solicitor

APPLICATIONS are invited for the above appointment. Salary A.P.T. Va (£650—£710) rising A.P.T. VII (£735—£810) after two years from date of admission. Detailed applications, giving names and addresses of two referees, should reach me not later than August 14, 1954.

Canvassing will be a disqualification and applicants must disclose in their application whether they are related to any member or senior officer of the Council.

W. R. WILKS,
Town Clerk.

17 Quay Street,
Newport, I.W.
July 26, 1954.

HERTFORDSHIRE COUNTY COUNCIL

Senior Assistant Solicitor

APPLICATIONS invited for an appointment on the staff of the Clerk of the County Council. Salary Grades A—C of Joint Negotiating Committee for Chief Officers.

Post involves responsibility for the work of the office in connexion with certain Committees and general duties as required. Local Government experience essential, experience in advocacy desirable.

Applications, with the names and addresses of three referees, to the Clerk of the County Council, County Hall, Hertford, by August 16, 1954.

WARWICKSHIRE MAGISTRATES' COURTS COMMITTEE

Petty Sessional Divisions of Atherstone and Nuneaton

Appointment of Whole-time Justices' Clerk

APPLICATIONS are invited from Barristers-at-Law or Solicitors of not less than five years standing for the combined whole-time appointment of Clerk to the Justices of the Atherstone and Nuneaton Petty Sessional Divisions (aggregate population 110,000).

Candidates should have had considerable experience in all branches of the work of Magistrates' Courts, including the keeping of accounts.

Salary £1,580 × £50 to £1,830, plus £100 per annum.

Applications, on forms obtainable from the undersigned, accompanied by the names of three referees, must be received not later than Thursday, August 26, 1954.

L. EDGAR STEPHENS,
Clerk of the Committee.

Shire Hall,
Warwick.
July 19, 1954.

BOROUGH OF DOVER

ASSISTANT SOLICITOR required, salary within A.P.T. X (£920—£1,050) according to ability.

Local government experience essential. Further particulars on request.

Applications, on forms provided, to be received by the Town Clerk, New Bridge House, Dover, not later than August 12, 1954.

CORNWALL COMBINED PROBATION AREA

Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of an additional full-time Female Probation Officer for the County of Cornwall, based at Truro.

The appointment will be subject to the Probation Rules, 1949-52, and the salary will be paid in accordance with these Rules. The salary will be subject to superannuation deductions and the selected candidate will be required to pass a medical examination. The officer will be required to provide a motor-car and an allowance will be paid in accordance with the scale adopted by the Probation Committee for the Combined Area.

Applications, stating age, qualifications and experience, and the names of three referees, must reach the undersigned not later than the first post on August 21, 1954.

Envelopes should be endorsed "Female Probation Officer." Canvassing, directly or indirectly, will disqualify.

E. T. VERGER,
Clerk of the Peace.

County Hall,
Truro.
July 20, 1954.

SURREY MAGISTRATES' COURTS COMMITTEE

Wimbledon Petty Sessional Division

Appointment of Deputy Clerk

APPLICATIONS are invited for the appointment of whole-time Deputy to the Clerk to the Justices in the Wimbledon Petty Sessional Division. Applicants must have a thorough knowledge of the work of a Justices' Clerk's Office and be capable of taking complete charge in the absence of the Clerk, including taking the Court.

The salary will be in accordance with A.P.T. Grade VIII (£785 × £20/£25 — £860) plus London Allowance of £30.

The appointment is superannuable and the person appointed may be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with the names of two referees, must reach the undersigned not later than August 31, 1954.

E. GRAHAM,
Clerk of the Committee.

County Hall,
Kingston-upon-Thames.

COUNTY BOROUGH OF ST. HELENS

Chief Assistant Solicitor

APPLICATIONS are invited for the above appointment at a commencing salary according to experience and qualifications within the scale of £950 rising by £50 per annum to £1,100 per annum. The appointment is subject to the National Conditions of Service, the Superannuation Acts and to a medical examination. It will be determinable by one month's notice on either side.

Applications, stating age, experience and educational qualifications, and giving names and addresses of two referees, should reach me by August 5, 1954.

T. TAYLOR,
Town Clerk.

Town Hall,
St. Helens.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Matrimonial Cruelty

Although magistrates dealing with cases of persistent cruelty are more often than not faced with evidence of a series of assaults, they sometimes have to deal with allegations of what is called mental or constructive cruelty. These are likely to prove difficult to decide, and so any guidance from the decisions of the superior courts is a help.

In *Lewis* v. *Lewis* (*The Times*, July 17) the learned Commissioner had granted a husband a decree on the ground of his wife's cruelty. The chief trouble appears to have been that the husband disapproved of two young men with whom the two young daughters were friendly and objected to their being brought to the house by the daughters, although there seems to have been nothing against them. The wife did not agree with her husband and allowed the young men to visit the house. The husband complained that his wife had poisoned the minds of the daughters against him and deprived him of their affection. The Commissioner found that in this the wife acted maliciously towards her husband and that her conduct which undermined his health amounted to cruelty.

The wife appealed successfully. In the course of his judgment, Denning, L.J., said the father did not realize that young things will stretch their wings and fly away, and young girls will find young men to take them out. And it was much better to accept it and let them bring the young men home than to drive them to be secretive—better to let them come into the home circle and be part of the family. But the father in his condition of mind did not realize that. It must be accepted that the wife was deficient in sympathy and tact. That was not cruelty. The Commissioner's finding that there was malice in all this against the husband was not justified on the evidence.

Motorists and Drinks

At the recent meeting of the British Medical Association, the question of the drunken driver was discussed, and one speaker is reported as saying that fresh legislation was required to bring under control those drivers who had been drinking to excess, but who were not drunk, and also to eliminate the many drivers who were unfit for other medical reasons. He also made the disquieting statement that one in ten of all licence holders were medically unfit to drive.

We do not quite appreciate the first point. The law already covers the case of a person who is under the influence of drink to such an extent as to be incapable of exercising proper control over a car, and it is always considered that it is not necessary for the driver to be in such a state that any ordinary person, or a medical practitioner, would describe him as drunk in order to bring him within the provisions of s. 15 of the Road Traffic Act, 1930.

Another aspect of the question was dealt with in a paper which had special reference to the difficulties of the police surgeon in this type of case. A five point plan was suggested as follows : There should be research to gain full knowledge of the skills and reactions that constitute proper control of vehicles. More accurate information should be sought of the effects of alcohol on those skills and reactions, as well as the personality and behaviour of various types of persons. A small and easily produced reaction-time machine should be developed, and police should recognize that adequate accommodation and facilities were needed for the police surgeon to carry out his examination of a driver. Finally, there should be an investigation of a method for examining suspect drivers in their own cars by experienced road test drivers.

Whether or not such a plan would be of assistance to the doctors is a matter for them to decide. When a case comes into court, however, we believe the average member of a bench or of a jury is more likely to be impressed by a simple statement from a doctor of the symptoms he observed and the opinion he formed than by a detailed explanation of theories and the demonstration of technical processes and ingenious devices. The opinions of an experienced police surgeon, and, for that matter, of an experienced police constable, must always carry weight, though of course there are exceptional instances in which cross-examination requires that there should be an amplification of the medical evidence by way of justifying the opinion expressed and negativing possibilities suggested by the defence.

Volunteered Evidence of Adultery

It is provided by s. 3 of the Evidence Further Amendment Act, 1869, and s. 32 (3) of the Matrimonial Causes Act, 1950, *inter alia*, that a party to any proceeding instituted in consequence of adultery and the husband or wife of such party shall be competent to give evidence in such proceedings, but shall not be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same proceeding in disproof of his or her alleged adultery.

In a recent divorce suit the husband, who was the respondent, gave evidence in support of the wife's petition which alleged adultery. Had he been called without his consent he could evidently have claimed protection from being asked questions designed to elicit admissions of adultery, but it appears from the case of *Spring* v. *Spring and Jiggins* [1947] 1 All E.R. 886, that there is nothing to prevent a party from volunteering to give evidence, and such evidence is admissible.

Family Allowances : Jersey

Effect is given in Great Britain to reciprocal arrangements with Jersey concerning family allowances, as from July 6, by the Family Allowances (Jersey Recriprocal Arrangements) Regulations, 1954, S.I. 1954 No. 863.

Decrease in Juvenile Delinquency

From many reports of chief constables and probation officers it appears that there has been for sometime past a decrease in juvenile crime. There is too much still, but at least there is ground for hope that the downward tendency will be maintained, showing that the efforts of the many bodies which have been engaged in helping young people have not been in vain.

Some of those who have the best opportunities of surveying the whole question of the up-bringing and behaviour of juveniles are the children's officers. One of these, Miss B. J. Langridge, of the Oxfordshire county council, at a recent meeting said that the rate of juvenile crime in the last few years had shown a tendency to fall and was still falling. Among the reasons for this trend was that things were gradually settling down after the war. Children born and reared in the war years were growing out of adolescence ; their fathers were home again and there was almost full employment for them.

On the question of mothers going out to work, Miss Langridge quoted comparative figures for delinquent and control groups, each about 1,200 strong, of the same ages and schools. There was little difference between the delinquent and control groups in the percentage of mothers going out to work. But the delinquent group compared unfavourably with the other in home conditions. A delinquent was three to four times likelier to come from a disturbed home atmosphere than from a normal one. Sociologists, Miss Langridge said, should work for such social conditions as would enable mothers to remain with their children, at least while they were small.

Council Houses and Means Tests

There is an element of humour about the protest by a local ratepayers' association against a form sent out by the city council of Bristol to its tenants. This form asks for details of their incomes, and (although we have not seen it) we imagine it was on the lines which have been followed in some other places, designed to ascertain the family income, so that a scheme of rent rebates and adjustments can be worked. From time to time there is much agitation against the occupation of council houses provided at less than an economic rent by persons with relatively large incomes. Ordinarily, one would suppose that a ratepayers' association would be against allowing houses subsidized by ratepayers and taxpayers to be occupied by those who could afford to live elsewhere, and would accordingly, in principle, be favourable to a scheme by which the rents of council houses were put up against a family which had a comfortable income. In the case before us, the association said that the council should be told to mind their own business, one member remarking that the form only needed the hammer and sickle to complete it. Council tenants naturally find means tests, and inquiries about the total earnings of all members of a family, distasteful, just as completing an income tax return is unpleasant for a taxpayer. It may indeed be more unpleasant (and with reason), because an income tax return is subject to strict control for securing secrecy, whereas a form submitted to a committee of a local authority cannot enjoy the same safeguards. Nevertheless the requirement that tenants shall fill up these forms is an inevitable accompaniment of any scheme for differentiating rents according to the tenants' needs, and such schemes of differentiation are themselves the result of a state of things in which houses are provided by local authorities at rents lower than an economic figure. The tenant living in a council house of which the rent has been reduced by subsidies from rates and taxes is receiving an up-to-date form of public assistance, and cannot fairly be heard to grumble at having to supply information about his needs to the local authority through which that assistance is supplied.

Members of Parliament Abroad

A member of Parliament who went on a lecture tour in the United States complained to the Secretary of State for Foreign Affairs, that, before leaving London, his finger-prints were taken by the United States authorities. He also complained that, when he passed from the United States to Canada and attempted to re-enter the States (which he was not allowed to do in virtue of the visa on his passport) he was kept waiting for three hours at the frontier, and had his finger prints taken again before being allowed to re-enter the United States. The second grievance seems to have been removed, for Mr. Selwyn Lloyd informed the member of Parliament, in a published letter, that such visas as he held had now been made available for more than a single entry into the United States. The grievance about finger-prints remains. This exists by virtue of the Immigration and Nationality Act of the United States, commonly called the McCarran-Walter Act, which allows no discretion to the United States consuls and other officers in Europe who have to apply the rules laid down by Congress. We confess to having no particular sympathy with the complaint. Every country is entitled to make what rules it likes for the admission of aliens, and there is no humiliation essentially involved in affixing one's finger-prints to a paper for the purposes of record. More disturbing is a passage in Mr. Selwyn Lloyd's published letter which says " a member of Parliament going to the United States in a private capacity is now treated in the same way as any other private individual." Why not ? The inference from the form of Mr. Selwyn Lloyd's letter seems to be that members of the British House of Commons ought to be treated, in other countries, as if entitled to privileges not extended to other British subjects. This looks like an echo (an unfortunate echo, to be found in a semi-official communication from the British Government) of a suggestion made some years ago from the front bench in the House of Commons, that when a fight breaks out between a member and a person who is not a member, and blows are exchanged, the non-member is the more serious offender. There was a claim made while the Defence Regulations still closed certain coastal areas, that a member of Parliament had as such a right to bathe from the beach in defence areas which were not even in his own constituency. The conventions of the British constitution do (rightly or wrongly) confer privileges upon members of Parliament, particularly in regard to legal process and to traffic, but the constitution has no room for new exceptions of this sort, or for claims that members should enjoy exceptional privileges in a foreign country. In a foreign country they are " private individuals," and should be content to be treated as such.

Negotiating Contracts

At p. 467, *ante*, we explained our reasons for dissenting strongly from the suggestions in regard to tendering for contracts, which had been published by a joint committee of professional bodies and commercial bodies in the building trade. It is with some surprise that we have found in a local newspaper that the urban district council of Portishead had been " negotiating with local contractors " for its housing contracts. We have merely the newspaper statements, and do not know

how the council reconciled this with normal practice under s. 266 of the Local Government Act, 1933. However this may have been, we are not surprised to learn that the policy of negotiating contracts locally has been unsuccessful. The council have given warning that future contracts may be put up to open tender, unless the contractors fulfil their bargains, and fulfil their council contracts by the specified dates. The complaint seems to have been that the builders who had received the contracts were diverting men and resources from the council's work to private building. Compliance with s. 266 of the Act of 1933 would not in itself stop this, but contractors selected in the proper way after open tendering would *prima facie* be less likely to leave the job and neglect the council's work than contractors chosen locally by direct negotiation.

Land Bought with Occupied House

Another facet of the special position occupied by local authorities as landowners was before Ormerod, J., in *Attridge* v. *London County Council*, *The Times*, May 11, 1954. The council had compulsorily acquired land, including a dwelling occupied by the vendor, as a site for the erection of houses under s. 73 of the Housing Act, 1936. Section 79 (4) of the Act, as it now runs by virtue of amendment by the Housing Act, 1949, provides that where a local authority acquire a building which may be made suitable as a house, or an estate or interest in such a building, they shall forthwith proceed to secure that the building is so made suitable. (The case began in 1948, so *The Times* report, properly enough, sets out this subsection in the other form, which was altered into that which we have just given by the Act of 1949). The former owner-occupier of the house which was before the court claimed that, under the subsection, it was the county council's duty to make the house suitable for use as such, if it was not suitable already, and that they could not pull it down, but Ormerod, J., held that the subsection was directed to cases of a different sort. This is true, as can be seen by tracing the legislative history of s. 79 (4), which came into the law as s. 20 (5) of the Housing Act, 1935. Section 20 was an extension of the powers for acquiring land given by s. 58 of the Housing Act, 1925, which was a consolidating Act, so that, plainly, Parliament did not intend what is now s. 79 (4) of the Act of 1936 to be a general limitation on all earlier powers. Nevertheless, as the Act of 1936 is framed, s. 73 and s. 79 now come in the same Part, so that the plaintiff's point was capable of argument. On merits, there seems more to be said for allowing a local authority to go ahead, when it has bought a house in order to demolish it and build other houses in its place (even though a private owner of the property would not have been able to do so) than there is to be said for the peculiar privilege given to local authorities as landlords, by comparison with the landlords of houses protected by the Rent Restrictions Acts.

Tax Litigation

Since our Note at p. 433, *ante*, was sent to press, a full report of *Morgan v. Tate & Lyle, Ltd.*, has become available at [1954] 2 All E.R. 413. Of the five speeches in the House of Lords, it may be that the dissenting opinion of Lord Keith, to which the least space was given in *The Times*, would, now that it is available in full in five pages of closely knit reasoning, command the concurrence of the greatest number of ordinary taxpayers if they ever read it, but this must be matter for conjecture, inasmuch as they will not. The man in the street will form his idea of the merits of the case on broad and simple lines. Except in the cases where a precedent is established from which he himself will benefit, he likes as a rule to see another taxpayer succeed against the Revenue, until he remembers that the other man's success must add to his own burden. On the other hand he is apt to be suspicious of the law when it lets big business " get away with " something : in this case with charging to the taxpayers at large the expense of defending a commercial interest against political attack. If the man in the street ever presses his consideration of the case beyond these simple propositions, above all if he ever reaches the stage of studying the twenty-four printed pages covered by the decision of the House, he will surely marvel that such a wealth of learning and judicial time had to be expended in talking round and round such a narrow verbal issue as the decision appears to be. He may well ask why Parliament when it passes taxing statutes cannot find words about which this degree of argument will be impossible.

Travelling Expenses

At p. 369, *ante*, we discussed the meaning to be attached to s. 113 of the Local Government Act, 1948—whether it entitles a member of a local authority to receive travelling expenses according to a scale, instead of his being repaid what he has paid out. At Grimsby county court, early in July, judgment by consent was given by the learned registrar in favour of a county councillor, who sought to obtain from the county council of the Parts of Lindsey travelling expenses over and above those which he had paid. The councillor contended that the prescribed form of claim was ambiguous, and that the section itself entitled him to first class fare (the county council having passed a resolution as required by the section) although he had travelled by third class railway and by bus. We have some sympathy with the claimant and other councillors in the like case, and also with the registrar who agreed that the prescribed form of claim was ambiguous. We remain, however, of the opinion which we expressed before. As the Grimsby case ended in a consent judgment by the registrar, it was not fought as it could have been. Had it gone before the judge, and then been taken to appeal, the result might have been different. We think similar claims should be resisted, unless and until a decision of the Court of Appeal is obtained in support of such a claim.

The City Aldermen

Some differences between the City of London Corporation and all others were dramatically marked by the episode of Mr. Lovely, who was elected at the ward mote, to fill an aldermanic vacancy in the ward of Cheap, but was refused admission by the court of aldermen. He was told, after a private session of the court, that they were not satisfied that he was a suitable person to be admitted to that position, though there was no reflection direct or indirect on his integrity, in his public life or in his business or private affairs. This meant that the election was abortive and a second ward mote became necessary, whereupon Mr. Lovely withdrew his candidature, rather than stand a second time, a course which might have produced a conflict between the court of aldermen and the electors. If a ward mote in the City thrice elects a candidate whom the court of aldermen still refuses to admit, the position is that the right of filling the vacancy passes to the court. All this is far removed from what happens elsewhere. In a municipal or metropolitan borough, or a city other than the City of London, these questions could not have arisen, inasmuch as the election is by the councillors, and nobody has ever pretended that the sitting aldermen have any veto. In the City of London it may at first sight be thought unsatisfactory that a right of veto should belong to the aldermen already on the bench, but this is, in reality, not out of place, inasmuch as the City of London alderman is *ex officio* a magistrate, the only alderman and the only judicial personage who, in this country, is chosen by direct popular election. Moreover, he

is when once elected an alderman for life. In Mr. Lovely's case it has been widely hinted in the press that it is unfair to a candidate that he can be rejected for no reason given, but the Lord Mayor and the court of aldermen have said publicly that there is nothing against his private, public, or professional integrity, and it seems best that the cause of his being rejected should remain unspecified. If it were announced there would be public argument.

Deliberate Litter

We have spoken several times lately about litter. A practical difficulty in securing improvement is illustrated by a newspaper story sent to us from Somerset. There is a favourite resort for motorists and other visitors called Shute Shelve, in the rural district of Axbridge. The county council have made a byelaw in the usual form, and the district council have provided litter baskets, but who is to see to it that visitors comply with the byelaws by putting the debris of their *al fresco* meals into the baskets? A parish councillor strolling there with his wife one Sunday afternoon ventured to remonstrate with a motorist who threw his cartons, *etc.*, on the ground, and was told "If you don't like it, you can pick it up yourself." The byelaw, or the parallel regulation in force in the royal parks, is indeed of no immediate value unless there is somebody on the spot empowered to enforce it. In one of the park cases in London to which attention has been drawn this year, the culprit was caught in the act, and could think of no better excuse than that he thought the regulation silly. So, unfortunately, do many other people, and they will act accordingly unless the local authorities concerned can find some method of enforcement—not everywhere at once, which would be scarcely possible, but perhaps by a couple of mobile enforcement officers, going round the county or the borough as the case may be on Saturdays and Sundays, taking places of resort in turn. The police have other things to do, and the enforcement officers could be drawn from other sources.

CONSECUTIVE PERIODS OF IMPRISONMENT: ANOTHER POINT OF VIEW

We appreciate the argument so clearly set out in the article "Imprisonment in Default of Payment of a Fine," at p. 465, *ante*, but we cannot accept the conclusion as sound.

We start with the fact, noted by our contributor, that the Act is a consolidating one and we suggest, therefore, that it must be made abundantly clear that any change from existing practice which affects the liberty of the subject has been intentionally made. If there is any room for doubt, that doubt must be resolved in favour of the view which does not add to the penalties which a defendant may suffer. We accept that the previous practice was as our correspondent states and in our view that practice was based on the law as it then stood.

But we think that the strongest argument against the view put forward is that it produces a result which is manifestly illogical and, we suggest, unjust. It is beyond dispute that if a defendant is summarily convicted of, say, six indicatable offences he is liable, by s. 19 of the Magistrates' Courts Act to be sentenced to six months' imprisonment and fined £100 in respect of each.

Let us take first the case in which he is sentenced in each case to six months' imprisonment. It is clear that the maximum period of imprisonment which he can be ordered to serve is twelve months.

Now let us take the case in which, for each offence, he is fined £100, and ordered to be imprisoned for three months in default of payment. Again it is clear that the maximum period for which he can be imprisoned if he pays nothing is twelve months.

Now let us consider the position when for each offence he is ordered to be imprisoned for six months and to pay a fine of £100 or three months in default. As we understand our contributor's argument these six fines of £100 now carry a maximum alternative of eighteen months to be served consecutively to the maximum of twelve months resulting from the six sentences of six months' imprisonment. If this is the true view we must accept that the law regards, in those circumstances, six fines of £100 which are not paid as deserving a longer period of imprisonment than can follow from six sentences of six months' imprisonment which allow no option of paying a fine. Moreover, the same six fines of £100, because each is now imposed in addition to a period of imprisonment in respect of a particular offence, carry a possible alternative of eighteen months when, imposed without terms of imprisonment, they would carry only twelve months.

Faced with this result which is so highly prejudicial to the defendant and, we suggest, so completely without logical justification, can we accept that Parliament so intended when passing into law an Act whose primary purpose was to consolidate existing law unless it is clear beyond doubt that that was how the law previously stood? We admit that it may be said to be illogical that a person who is fined six sums of £100 in addition to six terms of imprisonment should escape with the same period of imprisonment, if he pays nothing, as if he had been fined only £100. But this is what we may call an established illogicality which is inherent in any system which restricts the imposition of consecutive sentences. It is certainly no more illogical than that six sentences of six months' imprisonment should add up to twelve months, or that three months should be the maximum period of imprisonment in default of payment of a fine for, say, larceny whether that fine be £20 10s. or £100.

For these reasons our view is that the maximum period of imprisonment to be served in the last instance we cite (six periods of six months' imprisonment plus six fines of £100) is fifteen months, arrived at as follows: Of the six periods of six months five must run concurrently, each being consecutive to the remaining one. The six periods of three months can each be ordered to run consecutively to the period of six months imposed for the particular offence, and in the result the first three months runs concurrently with the five periods of six months and the other five periods of three months run consecutively, in each case, to the relevant period of six months, but concurrently with each other. We do not think that s. 108 (4) of the Magistrates' Courts Act authorizes, or was intended to authorize, anything else.

The fact that we have come to this conclusion does not mean that we think that the wording of s. 108 (4) is as clear as it might be, in fact it seems to us not nearly so clear as s. 27 of the Criminal Justice Act, 1925, which it replaces. That latter section enacted in terms that a sentence of imprisonment imposed

in default of payment of a fine might be ordered to begin at the expiration of *any term of imprisonment imposed for that offence* on that person, in addition to the fine. As a result we think it was abundantly clear that where by virtue of s. 18 of the Criminal Justice Administration Act, 1914, a number of terms of substantive imprisonment for different offences had to run concurrently any terms imposed in default of payment of fines in respect of those same offences had also to run concurrently with each other. Each could be ordered to begin at the expiration of the term of imprisonment imposed in respect of that same offence, and not at the expiration of any term imposed for failing to pay a fine in respect of another offence. We cannot suggest why s. 108 (4) does not follow more closely the wording of s. 27 of the 1925 Act, but we find more difficulty in accepting that the interpretation suggested by our correspondent represents a minor correction or improvement in the law.

UNBRIDLED BUREAUCRACY

By GRÆME FINLAY, M.P., *Barrister-at-Law*

The Crichel Down Inquiry has raised in plain relief outstanding constitutional issues over the control of the Executive acting through the Civil Service.

Sir Andrew Clark's Report contained conclusions which showed clearly not only muddle and inefficiency but a degree of personal spite against the principal complainant (Lieut.-Comdr. Marten) on the part of civil servants and government departments concerned. Besides this, material factors were not properly brought before the Minister of Agriculture and Fisheries when he was called upon to make decisions about the case. This failure can only be regarded as a serious matter when one remembers that a busy minister must necessarily rely upon the impartial efficiency and powers of judgment of his responsible officials to place before him a fair presentation of the facts.

Whilst we pride ourselves as a nation upon the high efficiency and integrity of our civil service, occurrences such as this should cause some deep reflections about the adequacy of existing controls upon the extremely numerous activities of the Executive. For in the " planned " society the State has reached the peaks of concentrated power and its executive decisions must be formed and carried out by the civil service under the umbrella of a minister responsible to Parliament for his department. But, of course, in only a fraction of the decisions can the minister concerned have brought his mind to bear upon what is his theoretical responsibility.

At the same time as the volume of bureaucratic activities has been increasing, the supervisory powers of the Courts, which enable the protection of the public, have been reduced. Often new " quasi-judicial " tribunals have been substituted due to objections to legal " formalities." This process may have strengthened the hands of the state but it has distinctly weakened the position of the subject. In such circumstances it is scarcely surprising that our top-heavy bureaucratic system produces cases like Crichel Down. It is mainly the system which is to blame and not the officials who are its executives. We have a remarkably fine and conscientious civil service but if it is greatly expanded (and it has to be expanded when there is such intensive state activity) the quality of its personnel will suffer. Crichel Down is a typical example of what must happen if a cumbrous and remote system is operated by a complicated network of officials all obsessed by a government project and regarding any potential opponent as a thorough nuisance to be defeated by hook or by crook. " Too many cooks spoil the broth. . . ."

It is a remarkable reflection that the property and freedom of action of the Frenchman are so much better protected against the operations of bureaucracy than those of the Englishman.

For the French have the protection of their *Conseil D'État* to secure them against the wrongful activities of their bureaucrats. The *conseil*, which was created before the French Revolution, is a very remarkable institution. It calls itself " la maison " and its handpicked composition consists of men who pass a stiff academic examination mostly in their youth. The Conseil exists to protect the French subject against the misplaced administrative activities of his officialdom. In so doing they contrive to combine in nice balance both a highly judicial approach to the issues and a very professional interest in proper administration.

The machinery for dealing with the exercise of discretionary power by a government department is extremely effective. If a French citizen wishes to attack a discretionary order by a French ministry the Conseil requires it to set out its reasons for making the order. These are then notified to the complainant and the Conseil proceeds to investigate their adequacy. If the ministry refuse or neglect to answer they can be brought to book, and if they continue in their refusal and neglect, the Conseil will give judgment on the assumption that all the relevant pleadings by the plaintiff are correct. Even if the ministry allege reasons which are *prima facie* sufficient for the exercise of the discretionary power, the Conseil may still quash the order if it appears that it is based upon significant facts which are wrong. This effective machinery certainly increases the protection of the French citizen. In the words of Professor C. I. Hamson, a distinguished authority on this subject, the situation " presents an extreme contrast to what may happen in England where the Minister of, for example (Housing and Local Government), can by peremptory rescript now in effect issue prohibitions to the High Court."

The Conseil is, moreover, decidedly tough on the government departments and not only exacts from them the highest standards of professional behaviour and decency towards the subject but has, for example, quashed many of their requisitions of private property since the war.

Some English authorities have always felt rather uneasy about the superiority of French law in this respect, and from time to time suggestions have been made that English law should follow the French model.

However, the Select Committee on Minister's powers which reported in 1932, soon after the publication of Lord Hewart's book the *New Despotism* (cmd. 4060), rejected the idea of a system of administrative law and administrative judges analogous to the French system. Since this decision the expansion of administrative field has been still more rapid and eminent contitutional authorities have increasingly questioned whether a great chance was not lost by the committee in 1932.

The fact of the matter is that we have pursued legal theory on this issue too far and in doing so have left our bureaucracy without any effective check upon their activities. We have kept the legal shadow and lost the legal substance which should be the proper protection of the man-in-the-street against ill-use by the government machine.

CENTRAL CONTROLS AND GRANTS

Dr. A. H. Marshall, city treasurer of Coventry, in his presidential address to the I.M.T.A. conference this year, mentioned local government in Sweden, where he had found what he described as superb local government services established and working without close central control and humiliating tutelage. He reported that only ten *per cent.* of the expenditure in urban areas and thirty *per cent.* in rural areas was met from government grants.

Dr. Marshall went on to say that local authorities were becoming dangerously dependent on government grants and "must suffer the central control which inevitably accompanies them." He drew attention to a circular issued to fire authorities in 1948 which restricted expenditure upon urgent repair or essential maintenance works without prior reference to the Home Office to a total of £10 multiplied by the number of fire stations. It is true that as a result of representations by the local authority associations the circular was subsequently withdrawn, but as he rightly stresses, the significant thing is that it could ever have been issued.

Here are other examples of irritating controls :

(*a*) the necessity for police authorities to obtain Home Office approval of the purchase of cars which are additional to or are to replace vehicles which have not completed specified mileages.

(*b*) plans for the provision of structural alteration of cells in police stations require approval of the Home Office. This requirement is laid down in s. 12 of the County Police Act, 1840 : it is evidently considered that what was good 114 years ago must be good today.

(*c*) all services are, of course, subject to building restrictions in accordance with present economic policy, but some government departments (notably the Home Office) operate these restrictions a great deal more meticulously than others.

(*d*) each police authority can only pay rent allowances up to a maximum approved by the Secretary of State. Travelling allowances payable to chief constables, assistant chief constables and superintendents also require approval by the Secretary of State.

(*e*) no part of police pension funds investments can be realized or used without Home Office approval.

(*f*) in respect of certain photographic equipment purchased by a fire authority the Home Office have requested full details of the items comprising a relatively insignificant total expenditure.

(*g*) in respect of approved schools, and here again the Home Office are the responsible department, the commencing salary of unqualified head mistresses and deputies, and certain instructors, the special responsibility allowance payable to deputies, principal teachers and instructors and the salary scale of the farm bailiff are all subject to Whitehall approval, and local authorities have no discretion to exceed the maximum annual allowances for many items of expenditure in connexion with these schools, *e.g.*, in relation to provisions, clothing, library books, films, recreations, furniture and household requisites.

(*h*) the Ministry of Agriculture and Fisheries is another department which seems never to have heard of the following words from the First Report of the Local Government Manpower Committee :

> "To recognize that the local authorities are responsible bodies competent to discharge their own functions and that, though they may be the statutory bodies through which Government policy is given effect and operate to a large extent with Government money, they exercise their responsibilities in their own right, not ordinarily as agents of government departments. It follows that the objective should be to leave as much as possible of the detailed management of a scheme or service to the local authority and to concentrate the department's control at the key points where it can most effectively discharge its responsibilities for Government policy and financial administration."

For instance, details must be submitted to the Ministry of proposed improvements to smallholdings involving expenditure in excess of only £250, and drainage authorities who receive grant on land drainage and similar works are required to submit monthly detailed wages sheets, receipted vouchers for all payments made for goods and services, detailed descriptions by quantities and unit rates of all stores issued and detailed calculations of all plant charges showing for each machine or vehicle the approved charges for its use and the number of hours or miles on which the charge is based.

(*i*) the Ministry of Transport carries detailed control of highway works in certain cases to quite unnecessary lengths.

On the other hand the Ministry of Education, responsible for a service accounting for about one half of the total expenditure of county councils and county boroughs, exercises its functions in a way which is remarkably reasonable by comparison with the others we have mentioned. The returns it requires are in the main only those vital statistics necessary to a Minister charged by Parliament with the duties set out in s. 1 of the Education Act, 1944. That Act lays upon the Minister the duty

> "to promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose, and to secure the effective execution by local authorities, under his control and direction, of the national policy for providing a varied and comprehensive educational service in every area."

We commend a study of its system to Dr. Marshall and others who think that specific service grants and meticulous control by the departments paying the grants are necessarily cause and effect.

Support for the view that the fault is departmental comes from D. N. Chester. In his book *Central and Local Government* he states that a great deal depends on how a government department exercises its power and says, for example, that the power to approve local authorities' proposed schemes may be regarded by the department either as providing the opportunity of assisting with advice or on the other hand as a means of imposing departmental views on the authority. He goes on to say that on the whole the Ministry of Health (now largely superseded by the Ministry of Housing and Local Government) usually adopts the former attitude whereas the Home Office have been nearer the latter. In *Animal Farm*, George Orwell wrote that all animals are equal but some are more equal than others. In theory control by all departments should be equal but obviously some of the denizens of Whitehall are the kind of animals which Orwell might well have had in mind.

If the O. & M. unit of the Treasury were allowed to investigate and advise on the removal from certain departments of what a famous district auditor of other days would have stigmatized as a mass of barbed wire and fishhooks, and if the advice of the unit were accepted a miracle would obviously have happened. But if it did—and miracles do sometimes happen—we think little more would be heard of the complaints about irritating controls.

Let us then not assume too easily that the only way of lessening controls is by reducing grants. If we may make reference again to Sweden, Dr. Marshall's paper makes it clear that central controls still exist there in spite of the relatively low grants.

We do not at all disagree that if grants could be substituted by other income raised by local authorities and under their direct control there might be great advantages. Local government would have a powerful argument against central direction of its activities : the extent of this freedom would depend on how far the government was willing to relinquish its over-riding supervision of services national or semi-national in character but locally administered. Such other income, however, could not come easily from rates, already regarded as too high in many localities, and would therefore have to be produced by new sources of revenue. Sources such as rates on site values and a local income tax have had their advocates but no government has yet been persuaded to authorize these levies and we think it highly unlikely that there will be any change of heart during that part of the future likely to be of interest to those now responsible for local government.

If we are correct, then the alternative is to persuade Parliament to abolish or restrict present grants and distribute an equivalent amount of money on some such basis as the old Block Grant of the Local Government Act, 1929, or the Equalization Grant, or a unit of cost for all services combined, or separate units for each service or parts of services, or by a combination of these or other factors, such distribution being made without the control of expenditure on each service to which we are now accustomed.

We think it unlikely that Parliament could be so persuaded and regard it as more practical to urge the implementation by the Civil Service of the principles enunciated by the Man Power Committee. This object involves no root and branch change : all that is required is that certain Whitehall empire builders should be made to realize that their unnecessary activities must cease. We believe the Government is concerned that waste should be eliminated. It is given here a fine opportunity to implement its principles.

ANNUAL REPORT OF MINISTRY OF HEALTH

The report of the Chief Medical Officer for 1952 has been issued as Part II of the report of the Ministry of Health and Part I will be issued later.

The estimated population of England and Wales increased by 140,000 to 43,940,000, of whom eleven *per cent.* were aged sixty-five and over as compared with five *per cent.* fifty years ago. The population of young men has fallen from 33·8 *per cent.* to 27·9 *per cent.* during the last twenty years and the percentage of men over the age of sixty-five has increased from 6·7 to 9·3. The proportion of older women has increased still more and the improved survival of women has accentuated the old-age weighting of their population structure. The death rate was 11·3 per 1,000 as compared with the record low rate of 11 per thousand in 1948. Deaths attributed to cancer of lung continued to increase. There was a substantial decline in the infant mortality rate to 27·6 per 1,000 births. On vaccination, where it is noted that the total number of persons vaccinated and re-vaccinated still declines, it is emphasized that the routine vaccination of infants is chiefly to be justified by the protection thereby conferred on the individual but that the susceptibility of the community as a whole to epidemic smallpox cannot be greatly diminished alone thereby and that the re-vaccination of schoolchildren is also necessary.

In the chapter on laboratory services, attention is drawn to the present position of the National Blood Transfusion Service which continues to increase in capacity. The Ministry is concerned at the unjustifiable use of blood in some cases when patients may be wrongly exposed to the risk of such treatment. Blood transfusion has been found a valuable means of shortening convalescence, thus helping to reduce the shortage of hospital beds, but it is pointed out that when the number of beds is adequate, the giving of blood merely to reduce the length of convalescence is difficult to justify, unless a pressing reason exists for the return of the patient to work or to the family. Errors in the use of blood sometimes arise because it is administered by persons who are not properly trained, particularly if given at night when the pathological laboratory is closed. It would be most unfortunate, however, if those who give their blood freely and regularly—now nearly 500,000—were discouraged from doing so because some patients are treated improperly, and it is to be hoped that the warning given in the report will be heeded by those concerned.

As might be expected, cancer as a cause of death is considered in some detail. It is thought that the incidence of the disease may have increased from 2,300 per million of the population to nearly 2,500 per million and in some areas it may exceed this. While research is still proceeding it is not considered desirable for cancer publicity to be carried out by any central government organization direct to the general public ; but that local authorities and voluntary bodies should be encouraged to carry out exploratory schemes of cancer education to enlarge the knowledge of what can be done in this field, and that there should be further facilities for educating doctors and medical students in the early recognition of the disease.

Turning to Maternity and Child Welfare, it is pointed out that the most outstanding change in recent years is the steadily increasing proportion of cases confined in hospitals, although the services of a doctor and midwife are now available without charge under the National Health Service. Local health authorities maintain child welfare centres where routine medical supervision of the children may be obtained free, and it is emphasized that their value lies in the early detection of children's physical or mental troubles and their treatment at the most favourable stage. But not nearly enough mothers, in the opinion of the Ministry, support these activities by their attendance.

ACCIDENTS IN THE HOME

The account of home accidents is disturbing. During the year, 5,226 persons died as a result of an accident in the home or in a residential institution. Sixteen *per cent.* of fatalities occur in children under five years of age and sixty-six *per cent.* in people over sixty-five years of age. It is clear that the excessive number of accidents at these two extremes of life must be connected with the ignorance of small children coupled with the lack of adult care and the disabilities of old age. More children under fifteen years of age die from accidents in their homes than are killed on the roads, and a fatal home accident is the third largest cause of deaths of children between the ages of one and five years. Falls continue to predominate in old people. In spite of the publicity given to burns and scalds, it is regrettable that the number of fatalities from accidental burns in the home shows no material decline. Another accident in the home which is causing anxiety to the Ministry is the poisoning

of small children, particularly from drugs and medicines which have been left by parents in places accessible to their children.

THE AGEING POPULATION

The section of the report dealing with the ageing population begins with an interesting historical account of the development in the care of the aged sick, and it is then pointed out that according to the 1951 census, the proportion of persons of pensionable age was one in seven as compared with one in seventeen fifty years ago. About ninety-seven *per cent.* of old people live independent lives ; the remaining three *per cent.*—and we are glad to emphasize this low figure—occupy accommodation in hospitals, mental hospitals, institutions, nursing homes, almshouses or hostels. In about thirty *per cent.* of the households the head of the house is aged more than sixty years and twenty-two *per cent.* of such households are occupied solely by elderly people living alone. There are about 1,200 old people's homes, half of which have been provided by voluntary associations, but it is stated that the demand has not been satisfied. It is said that criticism has been levelled against some homes in that they appear too luxurious. Others have been criticized for their refusal to accept any but the most able-bodied ; in contrast, some local authorities urge the need to provide some nursing in these hostels so as to prevent the removal to much-needed hospital beds of those persons who become bedfast purely on the grounds of extreme old age. To meet the demand for hostel accommodation, it has been suggested that they should not entirely provide for permanent residents but should accept others for limited periods to relieve the strain on the younger relatives and the domiciliary services. It is emphasized that " it is cheaper and often more comforting to the old person if he is able to retain the privacy of his own home, with the aid of the local authority and voluntary services ; and in this field the health visitor has a vital part to play, and the medical officer of health has great opportunity." As to those requiring hospital treatment there is said to be a waiting list of some 8,000 although the increased provision of geriatric physicians has shown that about twenty-five *per cent.* of the applicants do not require hospital admission but are purely sociological problems. The common difficulty is in the disposal of the recovered patient and it is estimated that twenty *per cent.* of aged sick beds are needlessly occupied on this account. The difficulty is shown when it is stated that " hospitals admit cases of illness rather than infirmity while welfare authorities are fearful of admitting to hostels persons with any marked degree of infirmity because of their inability to provide nursing, and because of the difficulty of obtaining transfer to hospital should the condition worsen." The Ministry continues to urge the closest co-operation between the hospital and the welfare authorities. It is agreed that as a result of the passage of years the existing residents in hostels become increasingly feeble and thus themselves present a problem. It is thought possible that the joint appointment of the geriatric physican to the hospital board and the welfare authority could have fruitful results ; and that more needs to be done on the prevention of mental and physical deterioration in ageing people. Some local authorities have already recognized this by appointing medical officers or health visitors for this specific purpose. It is truly stated in the report that " it is in the home that problems are being created and it is to the home that more attention should be devoted."

MENTAL HEALTH

Admissions to mental hospitals continue to increase and accommodation is still overcrowded amounting to an average of 14·7 *per cent.* It is emphasized, however, that from a purely medical point of view the change in the types of illness bringing patients to mental hospitals has an important bearing on the problem of hospital construction. It is suggested, therefore, that in designing a new hospital the living accommodation should provide for some form of geographical classification, so that, in particular, the difficult long-stay patients are kept well away from the others.

On rehabilitation it is shown that in many instances skilled advice about how to hasten recovery or minimize the disability with the aid of mechanical devices and vocational guidance may suffice. In others there is more need to give skilled attention to the psychological side. This is especially true in cases where the personality prior to the illness was poor or when the illness has been prolonged or is one of the forms of mental illness from which complete recovery is not to be expected though the mental deterioration likely to accompany the chronic mental disturbance can be arrested and the patient stabilized at a level well above that to which he would sink if left to his own devices. It is urged that for the patients who leave hospital or mental deficiency institution to return to the community, co-operation of the hospital with the local authority is essential. Sometimes this has been achieved by the social worker staff of the local health authority and of the mental hospital working together as a team. The development of the treatment of mentally ill patients in special units of general hospitals or in units apart from the mental hospital is comparatively new. But there are now approximately thirty such units containing 2,000 beds. The long-stay annexe for the treatment of old people whose mental deterioration is not such as to necessitate certification is another example of the tendency to try to look after psychiatric patients in the same way as others, without special legal provisions or other formal procedure.

The report concludes with chapters on the disposal of hospital beds ; nursing and the public health ; and international health.

ADDITIONS TO COMMISSIONS

CREWE BOROUGH

Ian Duncan Burton Bottomley, Cross Green House, 4, North Street, Crewe.
James Golding, 73, Middlewich Street, Crewe.
Cyril Srawley, 14, Berkeley Crescent, Wistaston, Crewe.

DARLINGTON BOROUGH

John Edward Angus, 11, Fern Street, Darlington.
Alan George Brown, 34, Carmel Road South, Darlington.
William French, 30, Linden Avenue, Darlington.
Joseph Lightford Pattinson, 24, Saltersgate Road, Darlington.
Mrs. Johann Walker Robinson, 62, Whessoe Road, Darlington.
Mrs. Kathleen Joan Sansom, 217, Carmel Road, Darlington.

EAST HAM BOROUGH

Mrs. Minnie Emma Bennett, 118, Haldane Road, East Ham, E.6.
John Richard Dowsett, 20, Bedford Road, East Ham, E.6.
Edward John Huxtable, 29, Hall Lane, Upminster, Essex.
Leslie Bernard Goodrum, 31, Altmore Avenue, East Ham, E.6.
Mrs. Grace Elizabeth Phillips, 12, The Drive, Snaresbrook, E.18.
Thomas William Sydney Raymond Richardson, 4, Shoebury Road, East Ham, E.6.

ESSEX COUNTY

Percy Charles Ford, 18, Osborne Road, Hornchurch.
John William Garton, Fabians Farm, Great Totham.
Edward Sewell Harris, 165, Orchard Croft, Harlow, Essex.
Albert Edward Hodgkinson, The Laurels, Sudbury Road, Halstead.
Mrs. Jessie Milford, 55, Westmoreland Avenue, Hornchurch.
Alfred Stanley Playle, Rivenhall Old Rectory, Witham.
Mrs. Olive Mary Roberts, 34, Gooshays Drive, Harold Hill, Romford
Frederick Charles William Shelley, Yonda, Manor Crescent, Little Waltham.

GREAT YARMOUTH BOROUGH

Miss Margaret Bobby, 39, Stradbroke Road, Gorleston.
Mrs. Hilda Florence Page, 50, Arundel Road, Great Yarmouth.
Mrs. Florence Rosalie Watson, 7, Cliff Lane, Hopton, Great Yarmouth.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Singleton, Denning and Morris, L.JJ.)

HALBAUER *v.* BRIGHTON CORPORATION

July 8, 12, 1954

Caravan Camp—Provision by local authority—Liability for theft of caravan—Exemption clause—" Person using the camping ground."

APPEAL by plaintiff from MCNAIR, J.

The defendant corporation provided for holiday makers a camping ground which was open during the summer season, *viz.*, from the first Sunday in March until the last Sunday in October. During the remainder of the year the camp was closed. Caravans, however, might be parked therein during the winter, although they could not be used by their owners. The charge for a caravan site while the camp was open was 25*s.* a week and during the winter 12*s.* 6*d.* a week. Regulations made by the corporation and forming part of the contract between the corporation and the caravan owners provided that during the summer the right to use the camp was by licence only. Regulation 8 contained an exemption clause in the following terms: " Liability. The corporation will accept no liability for injury to any person using the camping ground or for damage to or loss of the property of any such person."

The plaintiff, the owner of a caravan, used the camp during the summer seasons 1948 to 1951 inclusive. At the end of the summer season 1951 she decided to avail herself of the parking facilities provided by the corporation during the winter months, and at her request the caravan was removed to the tarmac area in accordance with the camp regulations. During the night of March 11, 1952, when the summer season had started and the camp was open, the caravan was stolen from the tarmac. The plaintiff claimed damages for the loss of the caravan which, she alleged, was caused by the negligence of the servants of the defendant corporation. In their defence the defendants relied on the exemption clause contained in reg. 8. The plaintiff replied that during the winter period the parking of the caravan constituted a bailment and that reg. 8 did not apply because she was not a person using the camping ground.

Held, as the theft occurred during the summer period when the plaintiff on the caravan site was a licensee she was in possession of the caravan and had to take care for its safety, and, therefore, the defendant corporation was under no duty to take care and was not liable.

Appeal dismissed.

Counsel: *Graham, Q.C.*, and *A. J. D. McCowan*, for the plaintiff; *Dutton Briant, Q.C.*, and *J. MacManus*, for the corporation.

Solicitors: *Woodham Smith, Borradaile & Martin*; *Sharpe, Pritchard & Co.*, for *J. G. Drew*, town clerk, Brighton.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Cassels and Slade, JJ.)

R. *v.* BOYLE

July 19, 1954

Criminal Law—Constructive housebreaking—Admittance obtained by trick—Larceny Act, 1916 (6 *and* 7 *Geo.* 5, *c.* 50), *s.* 26 (1).

Criminal Law—Procedure—Arraignment—Indictment containing a number of counts — Each count to be put separately and plea taken.

APPEAL against conviction.

The appellant pleaded guilty at the Central Criminal Court to an indictment containing a count for housebreaking on three other counts and was sentenced to four years' imprisonment. The appellant had called and told the householder that he had come on behalf of the B.B.C. to try to locate disturbances caused on the radio. He had not been sent by the B.B.C., but the householder admitted him believing what he had told her. He asked the householder for a glass of water, and, while she had gone to get it, he stole her handbag.

Held, that, as the appellant had obtained entry into the house by means of a trick, he was guilty of constructive housebreaking, and the appeal must be dismissed.

Per curiam, where an indictment contains several counts, each count should be put to the prisoner separately, and he should be asked to plead to each count as it is read to him. This applies not only to counts of a different nature, but also where there are alternative counts of the same character, as, for example, stealing and receiving.

Counsel: *Garth Moore* for the appellant; *Durand* for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal*; *Solicitor, Metropolitan Police.*

(Reported by T. R. Fitzwalter-Butler, Barrister-at-Law.)

MISCELLANEOUS INFORMATION

NATIONAL ASSOCIATION OF PROBATION OFFICERS WEST MIDLAND BRANCH

The branch's sixth weekend conference on the general theme: " The Probation Service at Work " was held from June 11 to 13 in the Police College at Ryton-on-Dunsmore, Warwickshire.

Mr. Frank Dawtry (General Secretary, N.A.P.O.), in the course of his address entitled " Fifty Years Back—Forty Years On " quoted the latest crime returns as revealing a nationwide reduction of offences especially among the young, and asserted that some of the credit for this happy state of affairs belonged to the probation service and to magistrates' and juvenile courts which had not been swayed by popular clamour for harsher sentences, but had continued resolutely with reformative measures of proven worth. Turning to the prison statistics, Mr. Dawtry referred to the marked reduction since 1949 in the number of young offenders sent annually to prison. This could only be attributed to the provision of the Criminal Justice Act, 1948, which stipulated that magistrates must give in writing their reasons for doing so if they decide to sentence a person of under twenty-one years to imprisonment. Would not a similar stipulation with regard to first offenders of whatever age be equally beneficial in its effect? It was from Samuel Butler's " Erehwon " that Mr. Dawtry produced a portrait of the probation officer of the future—one whose sense of vocation and arduous training had given him skill and professional status of the highest order.

Mr. Gilbert Paull, Q.C., recorder of Leicester and vice-chairman of Berkshire Quarter Sessions, spoke on " What I expect from the Probation Service." He told of the heavy responsibility of making the decision, which, either by its severity or by its ill-advised leniency, may blast the life of an offender. In this task he asks for and receives from the probation service guidance which considerably eases his burden. He gave a warning, however, that if the higher courts are to heed reports from probation officers these must give information not already supplied by the police and be searching to the point of being critical in their assessment of the offender and his background.

Mr. Peter Paskell, Principal Probation Officer, Nottinghamshire, spoke on " What can the Probation Service Provide." On the question of whether a second chance should ever be given to a probationer who commits a further offence, he asked how those who condemned such a course were ready to acquiesce in the giving of a second and, indeed, repeated chances of imprisonment to those who had failed to benefit from it.

WEST HAM FINANCIAL SUMMARY

The Borough Treasurer of West Ham, Mr. H. Hayhow, M.B.E., F.I.M.T.A., F.S.A.A., again leads the county borough field in the submission of his annual accounts for the year 1953/54. He is to be congratulated on his promptitude; also on the concise and attractive but inexpensive manner of presentation which he has adopted.

West Ham suffered much during the last war: the population in 1939 was 255,000 whereas the 1951 census revealed a drop to 171,000. Since the census there has been a further decline and the latest calculation has produced a figure of 169,000. Such a severe loss, equal to about one-third of the 1939 figure, obviously produces special problems. Some of these relate to the level at which services must be maintained: others are financial. As an example of the latter it may be mentioned that the population fall has caused a rise in rateable value per head from £5 18*s.* 7*d.* in 1939 to £7 5*s.* 4*d.* in 1954, and this has deprived West Ham of much Exchequer Equalization Grant. The Edwards Investigating Committee were aware of this anomaly and recommended a weighting of population in the grant calculation to assist county and county borough councils whose population had decreased substantially. The committee suggested that this adjustment should be effected by adding to the weighted population one-quarter of the number by which the fall in population over the fifteen years preceding the grant year exceeded five *per cent.* of the population in the first year of the fifteen year period. The effect in

West Ham would have been to reduce the rates by 2*s.* 2*d.*, but unfortunately for the borough it seems unlikely that the recommendations of the committee will be implemented.

Total expenditure for the year was £4,035,000 (education £1,627,000, housing £507,000, highways and bridges £254,000) and out of this total £1,558,000 fell to be met from rates. The rate levied of 27*s.* 0*d.* (1*s.* 0*d.* increase on 1952/53) actually produced £1,610,000 so there was an addition of £52,000 to balances as a result of the year's working. Income was divided as follows :—

	Per cent.
From Government Grants	39
,, Rates	41
,, Other Sources	20
	100

Mr. Hayhow again calls attention to the growth of the housing burden. The rate charge for 1953/54 was 2*s.* 3*d.* as compared with 1*s.* 10*d.* in 1952/53. The dwellings controlled by the corporation at March 31, 1954, numbered 7,316 : by comparison the total number of domestic hereditaments in the borough at that date was 41,720. Costs were met as under :—

	£	£	*Percentage of Total*
Net Rents		238,000	47
Council—			
Subsidies	23,000		
Additional Contribution	112,000	135,000	27
Government—			
Subsidies	66,000		
Reimbursement for Requisitioned Properties ..	64,000	130,000	26
			100

Ninety-eight *per cent.* of the total rate due was collected during the year and arrears fell from £14,700 at April 1, 1953, to £6,700 at March 31, 1954.

The Association of Municipal Corporations is in favour of the abolition of derating and if its view had been accepted Mr. Hayhow points out that an additional £425,000 of rate income would have accrued to West Ham, equal to twenty-six *per cent.* of the sum raised by rates in 1953/54.

Capital expenditure on Housing, Education and Town Planning continues to grow ; at March 31, 1954, the total capital expenditure of the corporation was £13,800,000 compared with an outstanding debt of £8,400,000. The average rate of interest paid to lenders on this debt during the year under preview was 3·34 *per cent.* as against 3·32 *per cent.* in 1952/53.

The booklet contains several useful diagrams showing, for example, the origin of each pound of income and the manner in which each pound of expenditure was divided amongst the principal services of the corporation. Informative unit cost tables are given also.

In West Ham the average ratepayer occupies a house rated at £15, and his weekly payment for rates amounts to 7*s.* 8*d.*

DENTAL AND MEDICAL SERVICES

We often see in various annual reports a note of the total cost, or estimated cost, of some particular public service which would be more intelligible if there was a statement relating the cost to the size of the population. We were interested to see therefore in the *Eastern Daily Press* a report of the annual meeting of the Norwich Executive Council which showed that the total expenditure in Norwich of the dental, pharmaceutical and general medical services was £352,187 last year which was about £2 18*s.* 0*d.* per head of the population. The chairman said the service was running quite smoothly with no serious complaints but he emphasized that it was as yet not really a health service but a sickness service. He attributed much of the sickness to bad housing conditions, wrong food and diet and mental worries and he looked forward to the time when the general practitioner would be able to spend less time succouring the sick and more time advising the healthy. We wonder, however, if it will not be many years, if ever, before this hope is realized and we suppose health education is really more a matter for the local health authority and their staff than for the overworked general practitioner. The point is sometimes raised as to whether and to what extent patients should change their doctors. In Norwich there were last year 119,347 persons on the doctors' lists of whom 3,426 changed their doctor during the year. The amount paid to the doctors for fees was about the same as in the previous year. At this meeting, as is usual at all similar meetings, the question of the difficulty of getting the chronic sick into hospital was raised and doctors in Norwich as elsewhere are very worried about the position. Dental services cost rather less than in the previous year although there was an increase of about 1,000 in the number of cases treated. Perhaps this means that expensive overhauls and new dentures which were a feature of the introduction of the health service are now giving way to the more regular treatments which should avoid heavy expenditure later. The one satisfactory feature of the Norwich report is the reduction by £4,000 of the cost of the pharmaceutical services. There was, however, an increase of approximately £2,500 in the cost of the ophthalmic services, an increase in the number of sight tests and an increase of 1,000 in the number of spectacles supplied in spite of the fact that patients contributed nearly £12,000 towards their spectacles. Evidently therefore the policy to make charges has not prevented people getting spectacles when they are needed.

ROAD ACCIDENTS—APRIL AND MAY

Just under 20,000 casualties occurred on the roads of Great Britain in May. The exact number so far reported is 19,967 ; this includes 372 killed and 4,755 seriously injured.

Compared with May last year there was a decrease in the total of 1,211. Sixty fewer persons were killed, and 319 fewer were seriously injured.

Final figures for April, issued today, give a total of 17,497. This was 394 less than in April last year. Deaths numbering 347 were up by three, but the number of seriously injured, 4,167, was 302 less than in the previous April.

A feature of the figures, which is becoming increasingly noticeable, is the number of casualties to riders of motor-assisted pedal cycles. In April these casualties numbered 208, which, although small in relation to other casualties, is forty more than in April, 1953. Casualties to other motor cyclists increased by 116 to 2,842, and those to motor cycle passengers by ninety-three to 887.

SHEFFIELD POLICE REPORT

The city of Sheffield, with a population of over 500,000, has an authorized police establishment of 764 men and sixteen women. On December 31, 1953, the actual strength was 716 men and sixteen women. On January 1, 1953, there were 736 men, so the position is not encouraging. Many men retire on pension after twenty-five years' service instead of taking a full pension after thirty years. The chief constable, Mr. G. E. Scott, O.B.E., states in his annual report : "I would point out that in most cases their decision is due to prevailing economic factors. Time after time I am informed by such men that they have reached their decision with regret, but that the present economic circumstances necessitate their establishing themselves in other employment before they are too old." On the other hand, recruitment is disappointing inasmuch as many otherwise suitable candidates have had to be rejected because of poor educational attainments.

In spite of these difficulties, there was in 1953 a reduction in the number of indictable crimes, the figure being 4,390 which was 385 less than in 1952. The percentage of detections was 55·83 *per cent.* and was higher than in 1952, and the highest standard of detections since 1940. Unfortunately, the number of sexual and indecency offences increased. There was also an increase in the number of offences of driving, or attempting to drive, a motor vehicle when under the influence of drink or drugs, the figure being thirty-six compared with twenty-three the previous year.

"The total of 508 persons proceeded against for drunkenness is 106 more than in the previous year. This is an increase of twenty-five *per cent.*, but the full extent of this disturbing trend is most evident from the fact there has been an increase of almost 400 *per cent.* in the number of cases within the last six years." Mr. Scott expresses concern about drinking among young people, which he considers to be a social evil.

Like most chiefs of police, Mr. Scott is anxious about the problem of road safety, a problem which increases as the number of vehicles on the roads continues to grow. Never-the-less, the position in Sheffield is better than in some places ; as although the number of deaths was two higher than in 1952, the figure was the third lowest since records were kept.

We are familiar with difficulties about police housing and their effect on recruitment and efficiency. This report is no exception to the usual pattern. "One of the most important aspects of welfare policy is that of good housing, but I am sorry to report that the position is still far from satisfactory, and very little progress has been made during the past year. A considerable number of men are still living under very unpleasant conditions, and I would strongly advocate that their needs be given urgent consideration, as a low standard of housing for police officers is a reflection upon the force as well as a hardship to the individuals and their families.

"A point not always realised is that the special needs of the police in regard to drying of wet clothing, unconventional meal times, and entering or leaving home late at night, or in the early morning, must entail some inconvenience in any household.

"These matters are soon adjusted when an officer is living in a modern house, but when he is residing with relatives, occupying rooms, or premises with inadequate water, cooking and heating arrangements, etc., the difficulties are tremendously aggravated."

DEVON PROBATION REPORT

Part-time probation offiers have rendered good service in the past, but there is a growing feeling that present day conditions make it preferable that there should be more and more full-time officers gradually replacing the part-time.

The effect of following such a policy is illustrated in the 1953 report of the Devon county probation committee. It is stated that at the end of the year the total number of probation and supervision cases was the highest ever recorded. In the absence of any marked increase in the incidence of either adult or juvenile crime during the last year or two, says the report, it can be assumed that the committee's policy of developing the service generally, particularly by the appointment of an increasing proportion of full-time officers, is leading to more widespread use by the courts of the services of the probation officers.

Increased use of reports by probation officers has been made by both adult and juvenile courts. This does not imply any increase in the number of offenders coming before the courts, but rather a recognition of the efforts of probation officers to supply the courts with useful information. This report points out, as other reports have, that the fact that a probation officer presents his report does not necessarily mean that he considers probation a suitable course. The figures over the last nine years show a steady increase in the number of these pre-trial inquiries.

ALMSHOUSES

The National Association of Almshouses continues to do good work in helping the trustees of almshouses in various ways to improve the properties for which they are responsible. Many of the houses were built a considerable time ago and require considerable improvement to meet modern conditions, but it would be a great pity if, owing to trustees having no money available to put them in order, they should fall into decay. Some of them are very attractive to look at from the outside but very uncomfortable to live in. Both the Pilgrim Trust and the Dulverton Trust are now making grants to help with improvement particularly of those with special characteristics. The association, in assisting any almshouse trustees to obtain financial help, rightly does not support any application unless it is clear that the work undertaken will result in the dwelling achieving a standard which may be assumed to comply with statutory requirements if the present exemption from registration under s. 37 of the National Assistance Act, 1947, is revoked. The association, according to its last annual report, has been instrumental in helping trustees to obtain improvement grants under s. 20 of the Housing Act, 1949, and in other ways has helped its members. It is satisfactory to see from the report that the membership increased by some 100 last year and that most of the new members have resulted from meetings in four counties where a definite approach had not been made previously.

AIR POLLUTION

The Committee on Air Pollution which made an interim report last December are now investigating in greater details the various problems generally and they have asked the associations of local authorities for evidence on the subject. In particular the committee have asked for views as to whether the existing law for the prevention of air pollution in so far as it is administered by local authorities, is adequate for the purpose and if not, what are the defects and in what respects does the law need strengthening. Another question raised is as to what are the difficulties which prevent more effective enforcement of the law by local authorities and as to whether there is a need for greater co-ordination of the work of individual authorities or for larger units of administration. Further the committee wish to hear from local authorities, as the owners of large numbers of houses, as to what measures they are taking for reducing domestic smoke; and what are the tenants' reactions; and what other measures it is considered might be taken.

The Manchester city council have been pioneers in what was described recently as the "fight against smoke" by Sir Hugh Beaver, the chairman of the committee on air pollution. With other members of the committee he has been having discussions with local authorities in England, Wales and Scotland. At Manchester, which was first visited, he described the present smokeless zone in Manchester as a remarkable achievement, but said that it must be realized that this is only a beginning. He said his committee were almost certain to issue its report by the end of the summer and certainly before the autumn. Salford has also under active consideration the planning of a zone and there is a possibility of joint action being taken with Manchester. The City of London are also hoping to take action to declare a smokeless zone in the city if proposals in a private Bill now before Parliament are approved. At present smokeless zones can only be prescribed if the local authority obtains the necessary powers by a private Act, but as suggested in the *Municipal Journal* the time is now ripe for general legislation granting smokeless zone powers, subject to Ministerial consent, to all local authorities. The use of smokeless fuel or gas or electricity is one important way to eliminate smoke and the Edinburgh city council are considering whether it should be made a condition of the tenancy of corporation houses that smokeless fuel should only be used. Up to the present, progress in this direction has been hampered by the scarcity and cost of such fuels. Now, however, in most areas adequate supplies of coke are becoming available. It is proposed in Edinburgh that there should be two smokeless zones but the main difficulty appears to be that the area proposed contains many private dwelling-houses which are sub-standard or unfit for human habitation and the replacement of the majority of existing fireplaces by those capable of burning smokeless fuel or gas or electricity would be expensive. Another difficulty is the nearness of the railway which is a constant source of smoke.

CO-OPERATION IN THE HEALTH SERVICE

So much has been written and said on the need for co-operation in the National Health Service or the lack of co-operation that it was as well that the Institute of Hospital Administration at its annual meeting should have an address on this subject by Sir Allen Daley, who could speak from his great experience as medical officer of health for London. He emphasized that the National Health Service exists for the prevention of ill-health, and only when this fails, for the cure of the individual; the first need for co-operation is therefore to ensure that the local health services are fully used. One cause of the increased burden of sickness is that people are now going to the doctors and to hospitals for minor illnesses which previously they would have neglected. In his view there is not enough co-operation between different hospitals; some of which are reluctant to refer a patient to another hospital and some resent having patients referred to them because the referring hospital was known to make beds available for "interesting" but not for the less interesting patients. The greatest problem is among the aged chronic sick and unfortunately many hospitals use every device to avoid taking them. Admission procedure should be simplified, and the admissions officer should be prepared to go and see the patient, whose admission is sought by his own doctor, as is already the practice in some areas. More co-operation is needed between the hospital authority and the welfare authority and one good scheme is where the medical officer of the local authority welfare home is a part-time medical officer of the hospital. As to patients in hospital, and their subsequent discharge, Sir Allen pressed that the medical officer of health should be consulted in any case in which it is likely that a patient after discharge may require the services of the district nurse, a home help or the health visitor. There should also be more co-operation between almoners and health visitors such as at one hospital, where the health visitors attend the hospitals and follow up some of the cases. In conclusion, Sir Allen said that an important part of the work of a health officer is to educate his people on matters concerning their health. He should have an important ally in the hospital doctor. The three branches of the National Health Service are so interlocked and the responsibilities are so arbitrarily divided "that the patient and the national health will inevitably suffer unless all concerned in administration regard it as their first duty to ensure that no individual patient suffers."

SALFORD POLICE REPORT

What can be done, even with a police force substantially below strength, by means of improved methods, is illustrated in the report of the chief constable for the city of Salford for the year 1953. The authorized establishment is 331 men and twenty-three women but the actual strength was 289 men and twenty-one women. During the year wastage exceeded the intake by fourteen. Mr. A. J. Paterson refers to the inauguration of a team policing system and to its effects since 1948.

The report sets out statistics comparing the work carried out during the past three years (1951–1953) with that performed in the last three years (1946–1948) in which the beat system was in operation.

In the past three years the number of "breaking in" offences for lock-up property has decreased by 321 (approximately 26 *per cent.*) compared with the period immediately prior to the introduction of the team system. The percentage of arrests by the uniform department rose from 26·2 *per cent.* in the 1946–1948 period to 39 *per cent.* in the last three years. The difference in the work of the uniform department is therefore most striking. While the total number of criminals arrested by the force as a whole rose from 2,225 to 2,474, a difference of 249, the contribution of the uniform department rose from 584 to 965, an increase of 381. "It is thus evident," says Mr. Paterson, "that the improved methods of policing now employed by the uniform department are wholly responsible for the increase in arrests. The increase of 65·2 *per cent.* in the number of arrests by the uniform

department in the last three years is an impressive and illuminating tribute to the efficacy of our methods of operating the team system of policing." The number of indictable offenders recorded was 415 fewer than in 1952, and was the lowest recorded in the post-war years. On the subject of sexual offences the report states, " Sexual offences against women and children decreased appreciably, and the few cases of indecency with males which came to light give grounds for the belief that homosexuality is not rife within the city." The number of children and young persons brought before the court was 177 compared with 229 in the previous year.

As usual in such reports, it appears that there is not much success in recruiting special constables. The authorized establishment in Salford is 236. The actual strength in 1953 was seventy. During the year one constable enrolled and two resigned.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 59.

MOTORING—AN UNUSUAL CHARGE

At Romford Magistrates' Court on July 13 last, a man, CD, was summoned for that he did, contrary to s. 35 of the Magistrates' Courts Act, 1952, unlawfully aid, abet, counsel and procure AB to commit the offence of driving a motor vehicle on a road when under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle; contrary to s. 15 of the Road Traffic Act, 1930.

The circumstances of the case were that two friends had visited licensed premises during the evening of June 24 last. After closing hours, the owner and driver of the car, AB, went with CD to the car park. They were then accompanied by a soldier. AB drove from the car park with CD sitting in the front passenger seat, and the soldier in the rear seat. After about one mile, CD saw that AB was having difficulty in driving, so he told him to use the pedals and he, CD, would steer the car; CD had no driving licence, and in fact, could not drive.

The car was driven in this manner for about two miles, when it was found that AB could not even use the pedals. The soldier was then asked to drive the car. AB got into the rear of the car, where he fell on the floor and remained there. The car was driven by the soldier for about five miles, when CD told the soldier he was taking the wrong road; at the same time he caught hold of the steering wheel and the car finished in a ditch. It was not possible to get the car out of the ditch, and the soldier left the other two men in the car.

About 2.15 *a.m.* a police car came upon the car in the ditch, and saw CD sitting in the front passenger seat, apparently asleep. AB was stretched out on the floor at the rear of the car in an apparent drunken stupor.

CD, on being questioned, admitted that he could not drive, and that AB was the driver. AB was arrested, subsequently certified as being under the influence of drink or a drug to such an extent as to be incapable of *having proper control* of the car, and charged with this offence (s. 15, Road Traffic Act, 1930).

Subsequent inquiries revealed that AB had not driven the car into the ditch, and that the driving of the vehicle had been handed over to a soldier some miles from the scene. Evidence was forthcoming to prove that AB had driven the car some distance, and that CD had aided and abetted him in the actual driving.

A summons was therefore served on A.B. for " Driving a motor vehicle when under the influence of drink or a drug " (s. 15, Road Traffic Act, 1930), and on CD for " Aiding and abetting this offence."

At the court the prosecution offered no evidence on the charge of " Being *in charge* of a motor vehicle while under the influence of drink or a drug," but proceeded on the second charge of " *Driving* while under the influence of drink or a drug." AB pleaded " Not Guilty " and was represented by counsel. The court convicted, and he was fined £25, disqualified for holding or obtaining a driving licence for twelve months, licence endorsed, and he was ordered to pay £5 7*s.* 6*d.* costs.

CD appeared to answer the summons against him for aiding and abetting this offence. He pleaded guilty, was fined £5, disqualified for holding or obtaining a driving licence for twelve months, and his licence ordered to be endorsed.

(The writer is greatly indebted to chief inspector Talbot, Essex county constabulary, for this report.) R.L.H

No. 60.

A CARAVAN OWNER IN TROUBLE

A caravan owner appeared at Staple Hill Magistrates' Court on July 8 last, charged with using land in contravention of an enforcement order contrary to s. 24 (3) of the Town and Country Planning Act, 1947. The particulars of the charge alleged that on October 8, 1953, the authority served on the defendant, by virtue of s. 23 of the Act, as the occupier of a certain parcel of land, an enforcement notice requiring him within thirty-five days after the service of the notice to cease using the land for human habitation and to remove the caravan used by him from the land and that the defendant on December 9 last without the grant of permission used the land in contravention of the notice in that he did not cease using it for human habitation and did not remove his caravan from the land.

For the prosecution, it was stated that the defendant made an unsuccessful application for planning permission in 1952 to put a caravan on the site in question. A public inquiry was held by a Ministry inspector in 1953, the result of which was unfavourable to the defendant. The defendant appealed against the decision, but the appeal was dismissed, and after proceedings had been commenced in December of last year there were several adjournments to enable him to find another site for his caravan.

Defendant, who pleaded guilty to the charge, was fined £5 and ordered to pay £3 3*s.* costs, the chairman stating " This is one of those cases where the Town and Country Planning Act does hit somebody a bit hard . . . you have had a good run for your money for fifteen months and you have fought hard to keep it (the caravan) there."

COMMENT

No one reading this report can fail to be impressed by the consideration shown to the defendant who, as the chairman said, had had a good run for his money.

Section 24 (3) of the Act enacts that where by virtue of an enforcement notice any use of land is required to be discontinued a person who, without permission, uses the land or causes it to be used in contravention of an enforcement notice, is liable on summary conviction to a maximum fine of £50 and, if the offence continues after the conviction, to a further conviction which may be punished by a fine of £20 a day so long as the forbidden use is continued.

(The writer is indebted to Major L. M. Harris, clerk to the Lawford's Gate justices, for information in regard to this case.) R.L.H.

No. 61.

A LICENSEE FAILS

The Lowestoft justices heard the licensee of a public house say to them on July 1 last, " I am afraid I am a very bad publican. I will get out as soon as possible."

This statement was made during the hearing of a charge against the licensee that he had been found drunk on licensed premises, contrary to s. 12 of the Licensing Act, 1872.

The defendant pleaded not guilty to the charge and evidence was given for the prosecution that at 9.35 *p.m.* on a day in June a police constable saw the defendant lying on the kitchen floor of the public house drunk and unable to hold a proper conversation.

During the hearing it transpired that the defendant pleaded not guilty on the ground that as he was in the private part of the house he did not think he came within the ambit of the section but on the prosecution referring to the case of *Evans* v. *Fletcher* (1926) 90 J.P. 117, defendant altered his plea and the court imposed a fine of 10*s.* and ordered payment of £3 3*s.* costs.

COMMENT

This case demonstrates that there is still some little misapprehension as to the extent of the alleged privilege of every citizen to get drunk in his own house without let or hindrance.

Section 12 of the 1872 Act which has survived the Consolidation Act of 1910 and the Licensing Act of last year, provides, as is well known, that every person found drunk . . . on any licensed premises shall be liable on first conviction to a fine not exceeding 10*s.*

It is clear from the judgments in *Evans* v. *Fletcher*, *supra*, that the Divisional Court in that case found some difficulty in reconciling the older authorities, but in the end they came without hesitation to the conclusion that if licensed premises are open for business of any

kind whether for the sale of alcoholic liquor or otherwise, or if they are open so that the public have access to them, a licensee found drunk on the premises may be convicted under s. 12.

(The writer is indebted to Mr. J. N. Martin, clerk to the Lowestoft justices, for information in regard to this case.) R.L.H.

PENALTIES

Norwich—July, 1954. Selling bread unfit for human consumption. Fined £20. Defendant company baked a loaf of bread in which was found fur and skin belonging either to a mouse or a small rat. The company had previously been convicted of a similar offence and fined £4, and ordered to pay £7 7*s*. 0*d*. costs.

Bromley—July, 1954. Obtaining three sums of money totalling £31, by falsely pretending that they had swept more chimneys and boilers at railway stations in Kent, Surrey and South London, than they in fact had (two defendants). Each fined £60, and to pay £6 6*s*. costs. Defendants, chimney sweeps employed by British Railways, were paid 3*s*. for each chimney and 6*s*. for each boiler swept by them.

Stroud—July, 1954. Giving a false fire alarm—three months' imprisonment. Defendant, after falsely reporting that a hayrick was on fire, called at the police station and said he had made a false call because he " was feeling fed up."

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

LEGAL AID AND ADVICE

Mr. Barnet Janner (Leicester N.W.) asked the Attorney-General in the Commons whether he would make a statement with regard to proposals for implementing the provisions of the Legal Aid and Advice Act, 1949, in order to avoid injustice being done to persons who through lack of means are unable to obtain professional advice when necessary so as to be adequately represented in county courts and magistrates' courts when necessary.

The Attorney-General, Sir Lionel Heald, replied briefly: " No, Sir."

Mr. Janner: " Does the Attorney-General feel that he is entitled to be so complacent about this matter in view of the fact that six million houses will be affected by the new Housing Repairs and Rents Bill? Does he realize that it is impossible for laymen to understand the complications involved in that Measure and similar Measures? Does he not think that something ought to be done to help the layman to conduct his case in the county court in a proper manner? "

The Attorney-General: " I am not in any way complacent about the matter. I fully appreciate the point of view of the hon. member, and I hope that the time may come when we shall be able to do something."

Mr. J. T. Price (Westhoughton) asked the Attorney-General about the procedure adopted by the Assistance Board in assessing the needs of applicants for legal aid and advice certificates. He said that one of his constituents had recently been granted a certificate and commenced a serious legal action in the High Court on the strength of the certificate, but later had the certificate withdrawn on a reassessment of means, which intervened while the action was pending. Would the Attorney-General look into that high contentious procedure?

The Attorney-General replied that that was a slightly different question, but if Mr. Price let him have particulars of that case, he would be glad to look into it.

APPROVED SCHOOL ORDERS

Mr. Janner asked the Secretary of State for the Home Department what action was taken by courts to see that in all cases where boys were ordered by a magistrate to be sent to an approved school from a remand home such orders were carried out; and in how many cases his attention had been called to non-compliance with such orders.

The Secretary of State for the Home Department, Sir David Maxwell Fyfe, replied that it was open to a court to authorise the detention in a remand home of a child or young person in respect of whom an approved order had been made pending the completion of arrangements for his reception into a suitable school or on account of his ill-health. Such an order fell to be renewed by the court after each period of twenty-eight days, and was therefore periodically kept under review by the court. He was not aware of any case of the kind referred to by Mr. Janner.

FLOGGING

Mr. C. Osborne (Louth) asked the Secretary of State for the Home Department if he would take steps to restore punishment by flogging in cases of robbery with violence upon Post Office officials in view of the increasing number of such cases.

Sir David, replying in the negative, said he had no evidence that such offences were on the increase, and he had no reason to think that the powers at present at the disposal of the courts were inadequate.

PERSONALIA

APPOINTMENTS

Mr. John Stoker, deputy town clerk for Wallsend-on-Tyne, Northumberland, has been recommended for appointment as town clerk in succession to Mr. Charles E. Bradbury, whose retirement was announced at 118 J.P. 314. Mr. Bradbury is to retire in September; he was admitted in 1924. Mr. Stoker was admitted in 1938.

Mr. Michael Casey, deputy town clerk of Dartford, Kent, has been appointed deputy town clerk to Finsbury metropolitan borough council. Mr. Casey was admitted in 1949.

Mr. T. W. H. Watkiss, has been recommended for appointment as clerk to Warwick rural district council in succession to Mr. W. J. Haynes who has retired.

Mr. F. G. Hails, clerk to the petty sessional division of Nuneaton, Warwick, has been appointed clerk to Dartford, Kent, petty sessional division.

Mr. John Kenneth Noel Stansbury, assistant solicitor to Luton council, has been appointed deputy clerk of Mombasa. Mr. Stansbury was admitted in 1947.

Mr. William Arthur Fearnley-Whittingstall, Q.C., has been appointed recorder of the city of Lincoln. Mr. Fearnley-Whittingstall has been recorder of Grantham, Lincs, since 1946. He was made hon. recorder of High Wycombe, Bucks, in 1949.

Mr. R. Howard Moore, clerk to Baildon, Yorks, urban district council for the past thirty-four years, has been elected chairman of the Urban District Councils' Association.

Mr. Gerald Chappell, town clerk to Bebington, Cheshire borough council, has been appointed honorary secretary of the North Wales and Cheshire Non-county Boroughs Association in succession to Mr. Walter Isaac, town clerk of Macclesfield.

OBITUARY

Mr. L. W. McRoberts, a former clerk to Blofield and Flegg rural district council, Norfolk, has died at the age of sixty-six. His period of office was from 1935, when Blofield and Flegg rural district council was constituted, until a few years ago.

BRIEFS AND BROOMSTICKS

The last day of the Legal Year marks the commencement of a Sabbatical period for judges, practitioners and legislators alike. In the Law Courts, the Royal Coat of Arms looks down upon an empty bench; the ancient precincts of the Temple hear few footfalls; the Chambers and lobbies of the Palace of Westminster are silent. Until October ushers in the

"Season of mists and mellow fruitfulness,"

members of Parliament and lawyers will be dispersed far and wide, their usual haunts deserted. With the coming of the Long Vacation a sense of emptiness descends upon us.

No ceremony marks the break. Parliament is not prorogued but each House is merely adjourned; the Session remains in being. In the Courts their Lordships rise as usual at the end of the last day of Term, bow gravely and disappear; their dignified mien gives no outward indication that they are putting off their robes for two and a half months. No one makes carnival in Chancery Lane; equity draftsmen hold no "breaking-up rag" in Lincoln's Inn. Peacefully and imperceptibly the bustle of Term fades away into the quiet of vacation.

Quite otherwise, if report be true, was Lammas Eve celebrated by the practitioners of lawlessness—the witches and warlocks who held their sabbaths on that night of high summer. In remote corners of the land, to forest clearings and lofty plateaus, hundreds of male and female devotees, old and young, by levitation and transvection through the air, converged upon the place of assembly where the black rites were to be held. There, from dusk till dawn, they performed their acts of worship, danced, sang and feasted, and were reputed to indulge in nameless orgies. Honest citizens and simple country-folk, watching from afar the glare of torches and listening to the exultant shrieks of the worshippers, crossed themselves devoutly and barricaded their doors. On this night demons were being invoked and Satan was abroad. And many a page of evidence from the State Trials bears gruesome witness to the superstitious dread that turned quiet, orderly communities into howling mobs, thirsting for vengeance by water, fire and blood.

Here and there, at infrequent intervals even in this enlightened age, the dark and ancient fears break forth, and in isolated villages persecution rears its ugly head. But in this country, by and large, witch-hunting in the literal sense is dead. The familiars that are hounded down by the Matthew Hopkins of today are not supernatural, but political; yet even in this connexion we may still be proud that mass-hysteria and mob-violence (despite horrid examples to east and west of us) have so far secured no hold upon our people. So, let us hope, may we continue to hold the fastness of sanity and reason in a darkening world.

What, we may ask ourselves upon this Lammas Eve, have the lawyers in common with the old practitioners of the Secret Art? First, surely, a fund of esoteric knowledge, acquired only after long years of studious devotion to ancient sources of learning, closed books to the *profanum vulgus* outside our charmed circle. Next, an *abracadabra* of magic words of power—a whole *grimoire* in the Latin tongue and strange outlandish phrases compounded of our native English and old Norman-French—*livery of seisin*, *frankalmoign*, *gavelkind*; *oyer and terminer*, *nisi prius*; *champerty*, *embracery* and the like. Thirdly, a meticulous attention to ceremonial and the trappings of tradition—wigs and gowns, scarlet robes, three-cornered hats, the procession of Judges, the herbs on the benches of the Old Bailey, the awful ritual of the capital sentence. Fourthly, the procedural survivals—the solemnity of the affidavit; signing, sealing and delivery "as act and deed"; archaisms of language; technicalities of pleadings. And, lastly, the temporal power behind the cold majesty of law—power that can bring fortune or ruin, life or death, to the highest and the humblest in the land.

True it may be that the Statute of Frauds and its amending Acts require no contract to be signed by the parties in their own blood; the solemn incantation at Assizes conjures up no Spirit of Darkness; the donning of the full-bottomed wig and silken gown precedes no human sacrifice at the Altar of Justice. *Habeas corpus* has nothing to do with necromancy; "hotchpot" has no connexion with the witches' cauldron; "conversion" does not connote the changing of the defendant into a toad, nor does "execution" necessarily call for the gallows and the drop. These things every law-student knows; but to many laymen they are strange, bewildering and a little frightening. For them the old adage is true—*omne ignotum pro mirifico*—what they do not understand has about it something of the marvellous. Dread of the unintelligible still lurks in the layman's subconscious; superstitious fear lies not far beneath the surface. That, perhaps, is why the man of law, though he may be respected, is seldom liked by the unthinking multitude, and though few of them nowadays would go so far as to suspect him *ex officio* of dabbling in the occult or consorting with evil spirits, yet there are not wanting those who attribute to the lawyer qualities which bear an unflattering resemblance to those of the Prince of Darkness. If the Devil, they say, can quote Scripture for his own purposes, so can the lawyer adapt his precedents to make the worse appear the better cause. The Evil One is forever seeking to entrap the unwary by cunning devices; the lawyer (it is said) entangles the ingenuous by obscure phrase and specious argument. Satan by his wiles sows evil in human hearts and rejoices when men are stirred to hatred and strife; the legal practitioner, they allege, incites his client to indulge in litigation and makes his living out of other people's quarrels. All of which provides food for sober contemplation to all of us who set out, this Lammas Eve, to celebrate the sabbath of the legal year. A.L.P.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Monday, July 19

HIRE-PURCHASE BILL, read 3a.
PHARMACY BILL, read 3a.

Wednesday, July 21

FINANCE BILL, read 2a.
LANDLORD AND TENANT BILL, read 3a.
SLAUGHTER OF ANIMALS (AMENDMENT) BILL, read 3a.

HOUSE OF COMMONS

Friday, July 23

FOOD AND DRUGS AMENDMENT BILL, read 2a.

BOOKS AND PUBLICATIONS RECEIVED

The River Boards' Association's Year Book, 1953.

Board of Trade. Administration of Enemy Property, Peace Treaty, Distribution of German Enemy Property and Sundry Related Legislation in Force in the United Kingdom on March 1, 1954. London: H.M. Stationery Office. Price 5*s.* net.

Home Office—Scottish Office. Ministry of Housing and Local Government. Ministry of Agriculture and Fisheries. Report of the Departmental Committee on Coastal Flooding. May, 1954. London: H.M. Stationery Office. Cmd. 9165. Price 2*s.* 6*d.* net.

Second Annual Report for Year ended 31st March, 1953. Lincolnshire River Board.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Assault—*Vaccination of child at request of mother—Father subsequently objects and alleges assault.*

A case recently occurred in which a doctor having obtained the previous written consent of the mother carried out the vaccination of an infant. Subsequently it appeared that the infant's father objected to the vaccination of his child and threatened to bring an action against the doctor for damages in respect of what he called the assault on his child.

While it seems clear that to perform a surgical operation on a person against his will or against the will of the person entitled to give consent on behalf of the patient constitutes an assault, I can find no authority bearing on the question of whether the consent of the mother is a sufficient consent if it is found subsequently that the father objects to the operation and no emergency exists. S. MEDICO.

Answer.

We are unable to quote any decision on this point, but in our opinion the medical practitioner was not guilty of assault. If he acted upon the authority of the mother and had no reason to suspect that the father objected we cannot see that he did anything wrong. When vaccination was compulsory, it was primarily the duty of the father to secure it, but if he was ill and unable to attend to it, or was absent, it was apparently the duty of the mother (26 *Halsbury* 477, note S). If in the present case the parents were living apart and the mother had the custody of the child, the position of the medical practitioner would be even stronger.

2.—Bastardy—*National Assistance being given—Period of time within which summons to father to answer complaint is allowed, under s.* 3, *Bastardy Laws Amendment Act*, 1872.

We are acting for a man against whom a complaint was laid by the National Assistance Board on February 9, 1954, alleging that he is the father of an illegitimate female child born to a single woman on March 27, 1951, and that assistance having been given under part two of the National Assistance Act, 1948, on November 23, 1953, and divers other days, by reference to the requirements of the said child, they applied under s. 44 (2) of the said Act for a summons to be served upon the respondent under s. 3 of the Bastardy Laws Amendment Act, 1872, to answer the said complaint. The hearing before the magistrates was adjourned in order that your opinion could be obtained on the following point.

It was contended by us on behalf of the respondent that s. 3 of the Bastardy Act applied and that the summons was bad as it had not been applied for within twelve months of the birth of the child.

It was pointed out that s. 44 (2) of the National Assistance Act, 1948, specifically provided that the Board could apply for a summons to be served under s. 3 of the Bastardy Act, but we argued the application for the summons had to be made within twelve months of the birth of the child, or within three years of payment of assistance made during such twelve months.

It was pointed out that if s. 44 (2) were to mean that the Board could apply for the summons at any time within three years after assistance had been given to the child, it could mean that the Board could give assistance when the child was fourteen years of age and apply for a summons within three years, that is up to the time that the child was seventeen years of age.

It was said that the true meaning of the section was that if the Board had given maintenance to the child within twelve months of birth the Board could, within three years of the date of the assistance, apply for a summons, in other words that by giving assistance, the Board would be able to take proceedings up to four years after the date of birth but not beyond that period. If the Board, however, had not given assistance within the twelve months then s. 3 of the Bastardy Act made it abundantly clear that a summons would not lie.

The supplement to the *Encyclopedia of Court Forms and Precedents in Civil Proceedings* relating to the heading of Bastardy says the alterations of the Poor Law made by the National Assistance Act, 1948, do not effect the law relating to bastardy and the case of *Taylor* v. *Parry* [1951] 2. K.B. 442 establishes this. Another argument is that s. 7 of the Bastardy Act was repealed by s. 62 of the National Assistance Act and if it had been intended to repeal s. 3 of the Bastardy Act or even amend it, the National Assistance Act would have said so.

We shall be obliged if you would kindly let us have an opinion whether the summons issued on February 9, 1954, against our client is in order or whether our objection thereto is valid. SUCCUM.

Answer.

We do not feel able to agree with our learned correspondent's arguments, clearly as they have been put. In our opinion, the condition that assistance must have been given within twelve months of the birth of the child cannot properly be read into s. 44, *supra*. If that had been intended it would, we think, have been stated. There would be no point in applying for an order after the child became sixteen, when normally payments under such an order cease, since the order could not be made retrospective.

We think the summons is in order.

3.—Highway—*Market removed—Dedication as highway—Re-establishment of market.*

The council administers a general market, acquired from the lord of the manor by a conveyance of 1901. They had previously administered a market on the land coloured blue, and collected the tolls and charges. The area of this market was extended when, in 1863, the council purchased land surrounding the Corn Exchange, now a theatre. From 1863 the whole of the land south of the theatre as far as Market Street was used as a site for a general market. By 1875, the district council had purchased from various owners the land hatched blue which was thereafter used as a cattle market.

In 1905, the cattle market was transferred to a new site, and the general market was transferred to the site of the former cattle market leaving the land to the south of the theatre vacant. This land (to the south of the theatre) has not been used for market purposes since that date, and has generally been regarded as a highway, and a section of it used as a street car park under s. 68 of the Public Health Act, 1925.

You are asked to advise whether the district council could, if they deemed it necessary, use once again as a site for market stalls the land to the south of the theatre. ANEW.

Answer.

Dedication is always to be determined as a fact, but *see* s. 1 of the Rights of Way Act, 1932. The council, as owners of the franchise, were entitled to move the market, and as owners of the soil were entitled to dedicate the disused market place as a highway. The facts before us suggest that they did so, and, if so, they cannot now encroach on the dedicated land by establishing (re-establishing) a market thereon.

4.—Local Government Act, 1933—*Lease of council's land—Consent.*

A definition of corporate property is included in s. 305 of the Local Government Act, 1933, and property within that definition belonging to a local authority can be let by virtue of s. 172 for a period of twenty-one years without the consent of the appropriate Minister. If it does not come within the definition, then the period is restricted to seven years by s. 164. Accordingly, before granting a lease for more than seven years, it is necessary to establish whether the property comes within the definition. Will you please let me know whether a cattle market provided by a local authority under the Public Health Act, 1875, is "corporate property" as defined, and similarly whether land abutting on a tidal river belonging to a local authority as harbour authority is corporate property or not. CORPORIS.

Answer.

The cattle market is excluded by the last seven words of the definition, since s. 166 of the Public Health Act, 1875, contained express statutory power to provide it. We are not told how the corporation became the harbour authority; this may have been by local Act. The mode of vesting the land may have to be looked into, but *prima facie* the excluding words have the same result.

5.—Magistrates—*Practice and procedure—Summons referring to original section but not referring to a later amending section—Defect in form.*

A summons was issued stating that A on September 24, 1953, sold goods to which a false trade description was applied in a material respect as regards the weight of the said goods contrary to s. 2 of the Merchandise Marks Act, 1887. The defendent was charged accordingly and pleaded "Not Guilty." Shortly before the end of his opening address prosecuting solicitor said that the proceedings had been "brought in accordance with the Merchandise Marks Act, 1887, as amended by the 1953 Act."

Defending solicitor objected and submitted that the summons referred only to the 1887 Act and no reference whatsoever was made to the 1953 Act. He pointed out that s. 2 (2), which had been referred to in opening, had in fact been deleted by the 1953 Act which substituted another subsection creating the offence. Further the penalties under the 1887 Act had been increased by the 1953 Act which is a material factor to be considered by a defendant. Defending solicitor referred

to the cases of *Smith* v. *Benabo* [1937] 1 K.B. (dictum of Goddard, J., at pp. 523 and 525) and *Fortescue* v. *The Vestry of St. Matthew, Bethnal Green* [1891] 2 Q.B. (dictum of Charles, J., at p. 177.) He maintained that according to r. 77 (2) of the Magistrates' Courts Rules, 1952, it was obligatory where an offence was created by an Act that the description of the offence *shall* contain a reference to the section of the Act creating the offence. The defence contended that as the section of the Act creating the offence in the 1887 Act had been repealed by the 1953 Act and furthermore new penalties had been imposed the defendant was wrongly charged under the 1887 Act and the summons was bad in law.

Prosecuting solicitor while not agreeing that the summons was bad asked that, if the court were of that opinion, they should amend the summons. He argued that the reference at the end of s. 4 of the 1953 Act to " this Act " meant the 1887 Act and therefore a reference in the summons to the 1953 Act was unnecessary. He maintained the defendant was correctly charged under the 1887 Act.

It would seem that if this is so there is no purpose in r. 77 (2). This rule is clearly designed to inform the defendant where he can find the section under which he is charged. In this case he would be referred to a "deleted" section. Byrne, J., at p. 167 of *Meek* v. *Powell* [1952] 1 K.B.; 1 All E.R. 347 ; 116 J.P. 116 makes it clear that " it is of importance that a conviction should be obtained under the correct statute although the wording of the provision repealed may be reproduced in a later statute." That is exactly what has not happened here, it is contended.

It seems clear from *Meek* v. *Powell* [1952] 1 K.B.D. at p. 167, that if a person is charged under a repealed statute, the justices have a choice of (*a*) amending, (*b*) dismissing, (*c*) adjourning.

The court neither amended nor dismissed the summons. The chairman announced, " We have come to the conclusion that this summons is in order." The case was heard and the defendant convicted.

We shall be glad of your answers to the following points :

(1) Was this summons bad in law in as much as it contained no reference to s. 4 of the Merchandise Marks Act, 1953 ?

(2) Could the justices in view of Magistrates' Courts Rules, 1952, and the cases quoted, rightly and properly convict of an offence charged under s. 2 of the Merchandise Marks Act, 1887, when s. 2 (2) was repealed by the 1953 Act and a new subsection substituted ?

(3) What is the defendant's best remedy(if any) by way of case stated or *certiorari* ? JUFAX.

Answer

In our view the offence was contrary to s. 2 (2) of the 1887 Act as in force at the time the information was laid. We think it is better practice to site the original section and to add " as amended by etc." The cases cited are not fully in point as they refer to instances where the section quoted had been repealed, either absolutely or by implication, or to a failure to mention a section which formed no part of the section referred to, either as enacted or as amended.

(1) We think this was a defect (if any) in form and that the summons was not bad (*see* s. 100 Magistrates' Courts Act, 1952).

(2) Yes. It does not appear that the defence alleged that they were really misled, or that they asked for any adjournment.

(3) Either method could be used to challenge the decision. In general, if appeal by case stated is possible it is better to use that remedy.

6.—Merchant Shipping—*Disobedience of orders—Fine in lieu of imprisonment—Maximum.*

I have read the report headed " A Disobedient Fisherman " at 117 J.P.N. 792, and I observe that (*inter alia*) the defendant was fined £5.

Having regard to the fact that the maximum imprisonment imposed by s. 376 of the Merchant Shipping Act, 1894, is twenty-eight days, is not the maximum fine which can be imposed £1, having regard to *Lowther* v. *Smith* [1949] 1 All E.R. 943 ? SOBRET.

Answer.

Upon the facts stated, we agree that our learned correspondent's suggestion is correct. This follows from the Magistrates' Courts Act, 1952, s. 27 (3) and sch. 3, which re-enacted the provisions of the Summary Jurisdiction Act, 1879, ss. 4 and 5, which were applicable when the case of *Lowther* v. *Smith, supra,* was decided.

7.—Police (Property) Act, 1897—*Goods purchased with stolen money.*

On p. 328 of " Questions and Answers from the Justice of the Peace, 1938-1949 " under para. 5 relating to the Police (Property) Act, 1897, it is stated that the position regarding goods bought with stolen money is not satisfactory.

Is not the case of *Cattley* v. *Lowndes* (1885) 34 W.R. 139 a direct authority for the proposition that the loser of money can claim goods purchased with it ? SATIS.

Answer.

The facts in the case cited were peculiar, but it may be that it seems to establish the principle suggested when the question is between the thief and the person from whom the money was stolen only. We do not feel at all sure that the position would be the same if the goods had passed into the hands of some third party such as an innocent purchaser. The absence of a definition of " true owner " leaves us in some doubt.

8.—Potatoes—*Supply of stockfeed potatoes—Intended for human consumption—Evidence.*

Clients of ours are charged with supplying stockfeed potatoes which they ought reasonably to have known would be used for human consumption contrary to the Ware Potatoes Order, 1952, and to reg. 55 of the Defence (General) Regulations, 1939. To these charges they are pleading not guilty.

We shall be obliged for any information you can give us as to the proof required by the prosecution in establishing of a *prima facie* case. We have been unable to find any authority dealing with a charge of this kind.

Your views with any authorities would be greatly appreciated. STARCH.

Answer.

The prosecution must prove that these were stockfeed potatoes within the definition in para. 2 of the order. They must also prove that the defendant sold or otherwise disposed of them and that he knew or ought to have known they were intended for human consumption. As to the last point, evidence might consist of statements made by the defendant, and the price charged might be relevant. Possibly evidence might be given by someone engaged in the potato trade who is expert in these matters, but we cannot cite any authorities.

9.—Parish Council—*Returning officer as candidate.*

(1) AB the clerk of a rural district council has been invited to accept nomination in connexion with the election of a parish councillor for one of the parishes in the area of his authority. By law, AB is the returning officer for the parish council, but he is not subject to any of the statutory disqualifications under s. 59 of the Local Government Act, 1933. *Prima facie* there appears to be no impediment against AB's becoming a parish councillor.

(2) If it is held that AB is debarred from standing at the triennial election because he is the returning officer for that election, would there be any impediment to the parish council's filling any casual vacancy which may occur by inviting AB ?

(3) By s. 49 of the Local Government Act, 1933, a parish council may elect as its chairman a person outside the parish council. Subject to AB's being qualified to be a councillor, could he accept office as chairman if asked to accept such office by the parish council, even though he is not a member of that body ? A.N.I.B.

Answer.

(1) Since he is not disqualified by statute, it is impossible to assert positively that he must not be a candidate. If he does become a candidate, it may be that he is " unable to act " as returning officer (as from his nomination) so that another person has to be appointed under r. 1 of the Parish Council Election Rules. But the point is doubtful. We should regard it as unwise for the clerk to accept nomination.

(2) Since this does not involve an election with AB acting as returning officer, we think so.

(3) Yes, in our opinion.

10.—Small Dwellings Acquisition Acts—*Payment by instalments.*

I have to refer to P.P. 9 on p. 176. It seemed to me, on a first consideration, that if an advance is made on the purchase of the site, before any building work is done, the inquirer's (iii) becomes the same as his (i). The argument is that eighty *per cent.* of the value of the work and of the land is equal to eighty *per cent.* of the value of the land as the value of the building work is nil.

But it may be that the phrase in s. 22 (*e*) " an advance may be made by instalments from time to time as the building of the house progresses " implies that no advance at all may be made before some progress has been made on the building. There are two alternatives to this : (*a*) one can ignore s. 22 (*e*) completely and lend ninety *per cent.* for the purchase of the land under the general power to lend ninety *per cent.* " to acquire the ownership of that house " (1899 Act, s. 1 (1))—that house being " intended " to be constructed—(1923 Act, s. 22 (*e*)), or (*b*) one can say the purchase of the site is part of the progress of the building of the house (taking an overall rather than a literal view).

Which of the three views do you now prefer ? PURQUOQUE.

Answer.

In our opinion the advance may not be made until the intention to construct the house is manifest. This will not be so on the purchase of the site alone. After the passing of the plans and the making of the contract to build seems the earliest time permissible—unless for example the house is physically in course of construction. We do not think that the purchase of a site only is sufficient intention to build, nor is it part of the course of construction.

CITY OF CARDIFF

Prosecuting Solicitor (Police)

APPLICATIONS are invited from qualified Solicitors, with not less than two years' experience from the date of admission, for the appointment of Prosecuting Solicitor (Police) in A.P.T. Grade VIII, £785 × £25—£860 per annum. General Conditions of Appointment are obtainable from me.

Applications for the appointment, accompanied by the names and addresses of three referees, should reach me not later than August 9, in envelopes endorsed " Prosecuting Solicitor."

S. TAPPER-JONES,
Town Clerk.

City Hall,
Cardiff.

BOROUGH OF KETTERING

ASSISTANT SOLICITOR required on Grade A.P.T. V(a) (£650—£710). Housing accommodation available. Applications, with names of three referees, to be sent not later than August 12, 1954, to Town Clerk, Town Clerk's Office, Kettering.

CITY OF LEICESTER MAGISTRATES' COURTS COMMITTEE

A SENIOR Assistant clerk is required in the office of the Clerk to the Justices. He will be responsible in particular for the supervision and control of the Fines and Fees Accounts and Exchequer Returns and must have good experience of the general legal work and administration to be found in such an office and be capable of taking a Court if required.

The appointment will be superannuable and the successful applicant will be required to pass a medical examination.

The salary on appointment will be not less than £540 per annum rising to £585 per annum.

Applications, stating age, present position and experience, together with the names of two referees, to be sent to me on or before August 21 next.

W. E. BLAKE CARN,
Clerk to the Committee.

Town Hall,
Leicester.

COUNTY BOROUGH OF GATESHEAD

Appointment of Assistant Solicitor

APPLICATIONS are invited for the permanent appointment of an Assistant Solicitor in the Town Clerk's Department at a salary in accordance with Grade A.P.T. VIII (£785 × £25—£860).

The appointment is subject to one month's notice on either side, the provisions of the Local Government Superannuation Acts and to medical examination.

Applications, in envelopes endorsed "Assistant Solicitor," giving particulars of age, qualifications, previous and present appointments, with the names of three persons to whom reference can be made, should be received by the undersigned not later than August 7, 1954.

C. D. JACKSON,
Town Clerk.

Town Hall,
Gateshead, 8.

HOLLAND (LINCS.) COUNTY COUNCIL

Appointment of Senior Committee Clerk

APPLICATIONS are invited for the above appointment at a salary in accordance with A.P.T. Grade VI (£695—£760 per annum) of the National Scales.

Applicants must have had previous experience as a Committee Clerk with a Local Authority.

Further particulars and conditions of service may be obtained from the undersigned.

Closing date for applications is August 31.

H. A. H. WALTER,
Clerk of the County Council.

County Hall, Boston,
Lincs.

BUCKS MAGISTRATES' COURTS COMMITTEE

Aylesbury Petty Sessional Division

Appointment of Assistant to the Clerk to the Justices

APPLICATIONS are invited for the appointment of a whole-time Male Assistant to the Clerk to the Justices.

Applicants must have considerable experience of magisterial law and practice, be capable of taking courts, and issuing process. They must also be competent typists and able to take depositions and to be responsible for all magisterial and Collecting Officer's accounts.

The salary in accordance with A.P.T. Grade VI, will commence at £695 per annum rising by annual increments, subject to satisfactory service, to £760 per annum. The appointment will be subject to three months' notice on either side, and will be superannuable. The successful candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience together with copies of three recent testimonials, should be sent to J. O. Jones, Esq., Clerk to the Justices, 16, Bourbon Street, Aylesbury, Bucks, by not later than August 20, 1954.

GUY R. CROUCH,
Clerk to the Magistrates' Courts Committee.

County Hall,
Aylesbury.

LANCASHIRE COUNTY COUNCIL

VACANCY exists in the office of the Clerk of the Council for a First Chief Assistant Solicitor. Salary scale £1,400 × £50—£1,650, commencing salary according to qualifications and experience. Candidates must have had experience of Local Government and Committee work. Appointment superannuable and subject to medical examination.

Applications, stating age, qualifications and experience, and particulars of present appointment, with names of three referees, to the Clerk of the County Council, County Hall, Preston, by Monday, August 30, 1954.

BOROUGH OF GUILDFORD

APPLICATIONS invited from newly-qualified Solicitors (or persons who will be shortly applying for admission) for the post of Assistant Solicitor. Salary—Grade A.P.T. Va—VII. Applications, with names of two referees, to be sent not later than August 16, 1954, to the Town Clerk, Municipal Offices, Guildford.

DURHAM COUNTY MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk

APPLICATIONS are invited from properly qualified persons for the appointment of whole-time Clerk to the Justices for the Lanchester, Consett and Stanley Petty Sessional Division which has a total population of 102,980.

The salary will be £1,550 per annum rising by annual increments of £50 to £1,800 per annum.

The appointment, which may be determined by three calendar months' notice on either side, is superannuable. The successful applicant must pass a medical examination.

Applications, stating age, qualifications and experience, together with the names and addresses of two referees, must be delivered to me not later than August 21, 1954.

J. K. HOPE,
Clerk to the Magistrates' Courts Committee.

Shire Hall,
Durham.

COUNTY COUNCILS ASSOCIATION

Assistant Solicitor

APPLICATIONS are invited from solicitors with local government experience for this appointment which is subject to the Conditions of Service of the Joint Negotiating Committee for Chief Officers and the Local Government Superannuation Acts, and is determinable on one month's notice. Canvassing will disqualify.

Commencing salary according to qualifications and experience on the salary scale £1,050 × £50 to £1,250 per annum.

A form of application may be obtained from me, and completed applications must be deposited by August 27, 1954.

W. L. DACEY,
Secretary.

84, Eccleston Square,
Westminster, S.W.1.

COUNTY BOROUGH OF BLACKPOOL MAGISTRATES' COURTS COMMITTEE

Appointment of Second Assistant in the Office of the Clerk to the Justices

APPLICATIONS are invited for the above appointment. Applicants must have a thorough knowledge of the work of a Justices' Clerk's Office, and previous Court experience is essential. The appointment will be made within the salary scale £490 × £15 — £535 per annum, commencing salary according to experience, the scale to be subject to review when National Scales for Justices' Clerks' Assistants have been negotiated or fixed. The appointment, which is superannuable, will be subject to one month's notice on either side, and the successful candidate will be required to pass a medical examination.

Applications, stating age and experience, together with copies of three recent testimonials, must reach the undersigned not later than Saturday, August 21, 1954.

CLIFFORD F. JOHNSON,
Clerk to the Committee.

55, Cookson Street,
Blackpool.

REGISTER OF LAND AND ESTATE AGENTS, AUCTIONEERS, VALUERS, AND SURVEYORS

CHESHIRE

CHESTER.—HARPER, WEBB & CO., Chartered Surveyors, Rating Specialists, 35 White Friars, Chester. Tel. 20685.

CORNWALL

FALMOUTH.—ROWE & KNOWLES, Strand, Falmouth. Tel.: 189 and 1308.

DEVON

AXMINSTER.—ARNOLD L. BALDOCK, B.Sc., A.R.I.C.S., Chartered Surveyor, Valuer, Land Agent, Shute, Axminster. Tel. 2388.

EXETER.—RIPPON, BOSWELL & CO., F.A.I., 8 Queen Street, Exeter. Est. 1884. Tels. 3204 and 3592.

ILFRACOMBE, COMBEMARTIN, WOOLACOMBE.—GREEN, F.V.I., F.F.B., F.C.I.A., Estate Agent, Auctioneer, Valuer. Tel. Business 973. Home 800. Ilfracombe.

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